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המרכז ללימוד ההלכות שבין אדם לחבירו

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מראה מקומות על
ההלכות שבין אדם לחבירו

The Torah's Guidelines
for Interpersonal Relationships

Based on the Hebrew Bein Adam L'Chavero curriculum of
Rav Yitzchak Berkovits

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לזכות רפואתו השלימה של
אלטר שמעון בן מרים בתושח"י

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יצחק שמואל הלוי ברקוביץ
ראש רשת כוללים לינת הצדק
סנהדריה המורחבת 113/27
ירושלם ת"ו

Chanukah, 5769

Dear Friends,

“There are three identifying features of this nation [the Jewish nation]: they are compassionate, they are sensitive, and they do acts of kindness” (Yevamos 79a). Engraved on the heart of every Jew – no matter how far he is from the knowledge of Torah – is the importance of one’s conduct in one’s interpersonal relationships. The majority of Mitzvos in practice today are in the realm of interpersonal relationships (Bein Adam L’Chavero), yet the attention to detail in this area and an awareness of their underlying principles is minimal.

This series of Torah sources has been compiled for groups dedicated to studying the Halachos of Bein Adam L’Chavero (the Linas Tzedek Kollelim). The aim of this series is to assist the study of Bein Adam L’Chavero topics from the Gemara, the Rishonim and the rulings of the Achronim. The series can be used by experts and beginners alike – each according to his ability – and there is a hope that one will fix set times for this important area of study.

It is our prayer that more and more people will find benefit from this series, and that its study will be translated into the actions and behavior fitting for “a kingdom of priests and a holy nation” (Shemos 19:6).

With Torah blessings,

Yitzchak Berkovits

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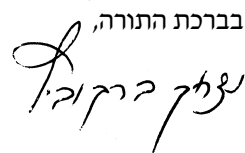
חנוכה תשס"ט

לכבוד אחי ורעי שיחיו

שלשה סימנים יש לאומה זו - רחמנים בישנים וגומלי חסדים. חקוקה על לבו של כל יהודי - רחוק שיהיה מידיעת התורה- היא החשיבות של ערכי ההנהגה שבין אדם לחבירו. מאידך, למרות שרוב מצוות עשה הנוהגות בזה"ז הן מצוות שבין אדם לחבירו, הדקדוק בפרטי ההלכות וההכרה ביסודותיהן היא מיזערית לעומת המצוות שבין אדם למקום.

קונטרסי מראי המקומות הנוכחים נערכו במסגרת כוללי לינת הצדק במטרה להקל על לימוד הסוגיות ע"י סידור דברי הגמ' והראשונים ופסקי האחרונים כדי שבני תורה, בעלי בתים ואף חסרי ידיעה בתורה יקבעו עתים ללימוד החשוב הזה- כל אחד ע"פ היכולות שלו.

אנו תפלה שיותר ויותר אנשים ימצאו בהם תועלת, ושהתלמוד יביא לידי מעשה - ההנהגה הראויה לממלכת כהנים וגוי קדוש.

בברכת התורה,


יצחק ברקוביץ

Note to the Reader:

This work is an English adaptation and re-working of the original *Mareh Mekomos al HaHalachos She'Bein Adam L'Chavero, Volume 1* by Rabbi Yitzchak Berkovits.

This book is designed to be studied either with a study partner, group, or in a classroom setting. For this reason the material herein does not read like the regular narrative of a book, but rather requires some work to connect the sources together. The complete Hebrew (and Aramaic) sources have been printed here. However, for the serious student, looking up the sources in the original Sefarim (Torah works) will provide context, completeness of understanding and the benefit of additional commentaries.

The aim of this work is to give the reader an introduction to the Torah guidelines to interpersonal relationships. As always, to obtain a practical and definitive ruling (Psak) for a given case, an Orthodox Rabbi or Posek (Halachic authority) should be consulted.

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CHAPTER 1

מדבר שקר תרחק *Distance Yourself from Falsehood*

Introduction

Can one alter the truth to avoid hurting another's feelings? Should one? Can one alter the truth for the sake of fulfilling a Mitzvah? And in both of these cases, what if the lie will cause financial or emotional harm to another person? And, further, what constitutes "a lie"? An exaggeration? An innuendo? Or maybe even silence could be considering lying?

The Torah treats the topic of truth and falsehood with exquisite sensitivity.

Although the Torah ideal of Emes is often translated into English as "truth," this rendering is too simplistic as the sources will show. The Torah's definition of Emes is dependent on who the message is being relayed to, how it will be heard, and what consequences it will have. The ideals of pursuing peace, avoiding damage to others, and maintaining the highest standards of refinement of character may temper the requirement to speak accurately and therefore contribute to how Halacha decides what the Emes is in every situation.

This chapter has six parts:

- A. The Mitzvah to distance oneself from falsehood
- B. To whom this Mitzvah applies
- C. Categories of falsehood and their leniencies
- D. Ensuring that the message is accurate, even though the words may not be
- E. Summary
- F. Practical Questions with Suggested Answers

A. THE MITZVAH TO DISTANCE ONESELF FROM FALSEHOOD

A1. *The Mitzvah is Stated Ambiguously*

שמות פרק כ"ג ו'ח'
Shemos 23:6-8 (Chumash)

לֹא תִטֶּה מִשְׁפַּט אֲבִינֶךָ בְּרִיבוֹ: מִדְּבַר שֶׁקֶר תִּרְחֹק וְנָקִי וְצַדִּיק אַל תִּהְרֹג כִּי לֹא אֶצְדִּיק רָשָׁע:
וְשֹׁחֵד לֹא תִקַּח כִּי הַשֹּׁחֵד יַעֲוֹר פְּקָחִים וְיִסְלֹף דְּבָרֵי צַדִּיקִים:

[The text in brackets is based on Rashi's explanation of the verses and the translators' elucidation.]

⁶ Do not pervert the judgment of your poor person in his lawsuit.

⁷ Distance yourself from falsehood. Do not execute a person who [is convicted in court, if new evidence arises before his execution suggesting that he] is innocent or one who has been acquitted. [Ultimately] I will not let a guilty person be absolved.

⁸ Do not accept a bribe, for a bribe will blind those who can see [i.e. those wise in Torah] and will make true words crooked.

Who exactly is the Torah addressing in verse 7 when it says to stay away from falsehood?

A general principle is that the context and placement of a verse gives it extra meaning. The Mitzvah to “Distance yourself from falsehood” appears between the verses dealing with a judge in a court of Jewish law, a Beis Din.

This could lead one to conclude that the Mitzvah is only a warning to a *judge* not to alter the truth or cause a perversion of justice. And, perhaps the common man outside of Beis Din, does not transgress the Mitzvah to “Distance yourself from falsehood” when he lies to his friend.

As shown in the next source, the Gemara implies that the Mitzvah only applies in a Beis Din.

A2. The Mitzvah applies to many subtle cases in Beis Din.

שבועות דף ל' ע"ב - ל"א ע"א
Shevuos 30b-31a (Gemara)

מנין לדיין שלא יעשה סניגורון לדבריו? תלמוד לומר: מדבר שקר תרחק. ומנין לדיין שלא ישב תלמיד בור לפניו? ת"ל: מדבר שקר תרחק. מנין לדיין שידוע לחבירו שהוא גזלן, וכן עד שידוע בחבירו שהוא גזלן, מנין שלא יצטרף עמו? תלמוד לומר: מדבר שקר תרחק. מנין לדיין שידוע בדין שהוא מרומה, שלא יאמר: הואיל והעדים מעידין, אחתכנו ויהא קולר תלוי בצואר עדים? תלמוד לומר: מדבר שקר תרחק. (סימן: תלת"א תלמי"ד ותל"ת בעל"י חו"ב סמרטוט"ט שומ"ע וממע"י"ם) מנין לתלמיד שיושב לפני רבו ורואה זכות לפניו וחוב לעשיר, מנין שלא ישתוק? תלמוד לומר: מדבר שקר תרחק. מנין לתלמיד שרואה את רבו שטועה בדין, שלא יאמר: אמתין לו עד שיגמרנו, ואסתרנו ואבננו משלי כדי שיקרא הדין על שמי? ת"ל: מדבר שקר תרחק. מנין לתלמיד שאמר לו רבו: יודע אתה בי שאם נותנין לי מאה מנה איני מבדה, מנה יש לי אצל פלוני ואין לי עליו אלא עד אחד, מנין שלא יצטרף עמו? תלמוד לומר: מדבר שקר תרחק... אלא כגון דאמר ליה: ודאי חד סהדא אית לי, ותא אתה קום התם ולא תימא ולא מידי, דהא לא מפקת מפומך שקרא, אפי' הכי אסור, משום שנאמר: מדבר שקר תרחק... מנין לשלשה שנושין מנה באחד, שלא יהא אחד בעל דין ושנים עדים כדי שיוציאו מנה ויחלוקו? ת"ל: מדבר שקר תרחק. מנין לשנים שבאו לדין, אחד לבוש סמרטוטין ואחד לבוש איצטלית בת מאה מנה, שאומרין לו: לבוש כמותו או הליבישהו כמותך? ת"ל: מדבר שקר תרחק. כי הווי אתו לקמיה דרבא בר רב הונא, אמר להו: שלופו פוזמוקייכו וחותרו לדינא. מנין לדיין שלא ישמע דברי בעל דין (חבירו) קודם שיבא בעל דין חבירו? ת"ל: מדבר שקר תרחק. מנין לבעל דין שלא ישמע דבריו לדיין קודם שיבא בעל דין חבירו? ת"ל: מדבר שקר תרחק. רב כהנא מתני מלא תשא לא תשיא.

רש"י

לא יעשה סניגורון לדבריו. אם דין וכלו נוקפו לומר שהוא טועה לא יחזיק דבריו להציא ראיות להעמידם שהוא צדק לחזור אלא לכל נדדים יחזור להוציא דין לאמתו.
שלא ישב תלמיד בור לפניו. לישא וליתן צדין עמו שלא יטעהו.
שלא יצטרף עמו. ואע"פ שהעדות אמת.
מדבר שקר. שגורס לפסוק דין על פי שנים עדים ואין כאן אלא עד אחד.
שהוא מרומה. שלמד מתוך דברי עדים שאין עדותם אמת.
קולר. שלשלת העון.
ורואה זכות. וכבו החליף.
איני מבדה. משקר.

וקום התם. וסיהא סבור בעל דין שאתה צא להעיד ויודה אמת.
ואגלגל עליו שבועה. שאינו מודה לי במקלת ואשביענו על ידי גלגול או שבועת קרקעות שאין נשבעין עליהן
אלא על ידי גלגול.
שלא יהא אחד בעל דין ושנים עדים. והם בעלי דין.
לבוש כמותו. שלא תגרום לנו לישא לך פנים או יסתתמו דברי שכנגדך מפני חשיבותך ואמר איך יאמינו כי בית
דין על אדם חשוב כזה.
מדבר שקר תרחק. וכיון שאיש מריבו מסותם מעמיד זה את שקרו.
פוזמוקייכו. כמין אנפיליאות חשובים קלאונ"ש בלע"ז.
לא תשא. אזרה למקבל.
קרי ביה לא תשיא. אזרה לבעל דין.
שמע שוא. שהמטעים דבריו שלא בפני בעל דינו אינו צוש מדברי שקר.

Our Rabbis taught in a Baraisa:

[Case 1] From where [do we know] that a judge should not support his [erroneous] ruling [by citing supporting evidence, when he knows he may have erred but is embarrassed to retract]? The Torah states: "Distance yourself from falsehood."

[Case 2] From where [do we know] that a judge may not have an unlearned apprentice sit with him [to discuss the case on trial, if the student may cause the judge to make an error]? The Torah states: "Distance yourself from falsehood."

[Case 3] From where [do we know] that if a judge knows that his fellow judge is a robber, or if a witness knows that his fellow witness is a robber, that he may not come together with him [to form a panel of judges or a set of witnesses, even though the testimony his fellow will give is truthful]? The Torah states: "Distance yourself from falsehood."

[Case 4] From where [do we know] that if a judge is aware that the ruling of the case will be incorrect [since he based it on the false testimony of the witnesses] – that he may not say, "Since the witnesses are testifying to this effect – that is how I will rule, and the transgression will hang on their necks"? The Torah states: "Distance yourself from falsehood."

[Case 5] From where [do we know] that if a student is sitting before his teacher [who is the judge in Beis Din], and [the student] sees a supporting argument for the poor litigant, or an argument against the rich litigant

[that his teacher missed] – that he may not sit quietly? The Torah states: “Distance yourself from falsehood.”

[Case 6] From where [do we know] that if a student sees his teacher [who is the judge] making a mistaken ruling, that he should not say, “I will wait until he makes the ruling and then I will tear it down and build it through my [reasoning] so that the ruling will be announced in my name?” The Torah states: “Distance yourself from falsehood.”

[Case 7] From where [do we know] that a student [is prohibited from agreeing with his Rabbi if] his Rabbi told him, “You know that even if I were given 100 Maneh [a currency where 1 Maneh is equivalent to 425 grams of silver] [as repayment for money I lent out], I would not lie [and say I never received repayment]. I have an [unpaid] loan of 100 Maneh with Ploni [but he refuses to pay me], and I only have one witness against him [who witnessed the loan].” From where [do we know that that the student] may not join [and give testimony with the other witness]? The Torah states: “Distance yourself from falsehood.”

[The Gemara objects that the case cited by the Baraisa is prohibited by a different verse: “Do not testify as a false witness against your fellow” (Shemos 20:13). The Gemara answers that the correct understanding is as follows:] Rather, [the case is where the Rabbi] said to him [the student]: “I only have one witness. You come and stand there [next to him to give the impression that you are coming to give testimony as well, so as to cause the fellow to admit that he owes me the money], and do not say anything and no falsehood will leave your mouth.” Even here [in such a case where the student will be silent] it is forbidden because it is stated: “Distance yourself from falsehood.”

[Case 8] From where [do we know] that if one person is owing a Maneh [a currency equivalent to 425 grams of silver] to three people [and now he denies the debt and there are no witnesses], that they [the three people] may not act as though one of them is the claimant and the other two are the witnesses so as to get the Maneh and split it among themselves? The Torah states: “Distance yourself from falsehood.”

[Case 10] From where [do we know] that if two litigants come to court – and one of them is dressed in rags and the other is dressed in fine garments worth one hundred Maneh – that we tell him [the wealthy litigant], “Either dress [in rags] like him, or give him [fine] clothing like yours”? The Torah states: “Distance yourself from falsehood.”

[The Gemara cites an example of this last ruling:]

When [litigants] came to Rava bar Rav Huna, he would tell them, “Remove your fancy shoes and then come down for judgment.”

[Case 11] From where [do we know] that a judge may not hear one litigant’s argument until the other litigant is present? The Torah states: “Distance yourself from falsehood.”

[Case 12] From where [do we know] that a litigant may not present his claim to the judge, before his fellow litigant arrives? The Torah states: “Distance yourself from falsehood.”

Rav Kahana derives [these last two rulings] from [the verse in Shemos 23:1] “Do not accept [a false report.]” This prohibits the judge hearing testimony when the opposing litigant is not present. The verse can also be read as “Do not cause [a false report] to be accepted.” [This reading is a warning to the litigant not to present his claim before the other litigant arrives].

The Gemara lists a number of cases in Beis Din involving subtle perversions of justice – as well as not so subtle – that are prohibited under the command to “Distance yourself from falsehood:”

1. It is prohibited for a judge to present evidence in support of his erroneous ruling.
2. It is prohibited for a judge to sit with an unlearned apprentice who then causes the judge to become confused and make an error in judgment.
3. It is prohibited to have a known robber be one’s fellow judge or witness.
4. It is prohibited for a judge to rule based on testimony that he thinks is false.
5. It is prohibited for a student to remain quiet in front of his Rabbi (who is the judge) when he has a supporting argument for the poorer litigant.
6. It is prohibited for a student to allow his Rabbi to make an erroneous ruling, so that the student can come afterwards and overturn the ruling. If he did so, the student would have the honor of having the final ruling be in his own name.

7. If one's Rabbi is rightfully claiming money from a defendant but only has one witness, it is prohibited for one to accompany his Rabbi to Beis Din in a manner in which the defendant will think that the Rabbi has two witnesses (when he actually only has one), since the defendant will settle outside of Beis Din due to his fear.
8. If one person owes money to three claimants, and the claimants have no witnesses, it is prohibited for one claimant to claim the total amount, and for the other two to act as witnesses.
9. It is prohibited for Beis Din to allow one litigant to dress in a fashion that makes him appear more dignified and reliable than the other litigant, since a more refined dress is likely to affect the judges, or cause the other litigant to feel intimidated.
10. It is prohibited for a judge to hear the claim of one litigant when not in the presence of the other.
11. It is prohibited for a litigant to make his claim heard when not in the presence of the other litigant. (The Gemara shows that these last two cases can be derived from the verse "Do not accept a false report," since the verse can also be read as "Do not cause a false report to be accepted.")

The common feature of all of these cases is that they relate to the proceedings in a Beis Din. The Torah considers a case to involve "falsehood" when there is no outright lie (for example, cases 2 and 6) or when the claimant demands what is rightfully his, but lacks witnesses (case 8). Even silence could constitute falsehood (cases 5, 6 and 7), or the way one dresses could lead to falsehood (case 9). These cases can answer the questions posed in the Introduction – if silence can constitute falsehood, then all the more so an innuendo is falsehood.

So far, the Torah is only addressing participants in a Beis Din when it says "Distance yourself from falsehood." However, the next source demonstrates that there are other cases in the Gemara that imply that *everyone*, not only a judge, is commanded to "Distance yourself from falsehood."

B. TO WHOM DOES THIS MITZVAH APPLY?

B1. The Mitzvah Applies Even Outside of Beis Din

כתובות דף ט"ז ע"ב - י"ז ע"א
Kesubos 16b-17a (Gemara)

תנו רבנן: כיצד מרקדין לפני הכלה? בית שמאי אומרים: כלה כמות שהיא, ובית הלל אומרים: כלה נאה וחסודה. אמרו להן ב"ש לב"ה: הרי שהיתה חיגרת או סומא, אומרי' לה, כלה נאה וחסודה? והתורה אמרה: מדבר שקר תרחק! אמרו להם ב"ה לב"ש: לדבריכם, מי שלקח מקח רע מן השוק, ישבחנו בעיניו או יגנו בעיניו? הוי אומר: ישבחנו בעיניו, מכאן אמרו חכמים: לעולם תהא דעתו של אדם מעורבת עם הבריות.

The Rabbis taught in a Baraisa: "How do we dance before the bride? [How do we praise the bride to the groom?]."

Beis Shammai say: "[We praise and describe] the bride as she is."

But Beis Hillel say: "[In all cases we give praise and say] that the bride is beautiful and charming."

Beis Shammai said to Beis Hillel: "Now, if she were lame or blind do we say about her that she is a beautiful and charming bride? But the Torah has said: 'Distance yourself from falsehood.'"

Beis Hillel said to Beis Shammai: "According to your view, if someone made a bad purchase in the market [and he asked your opinion on the purchase, and he had no way of returning the item], should one praise it in the purchaser's eyes or denigrate it? Of course you would say that one should praise it in his eyes. [We should therefore praise even a homely bride]."

From here [i.e. this statement of Beis Hillel] the Sages said: "A person's mind should always be mingled with people" [i.e. one should be amiable and good-natured. Rashi: One should always act towards a person in the manner in which that particular person prefers].

It is clear from Beis Shammai that the Mitzvah to "Distance yourself from falsehood" applies even outside of Beis Din – everyone is required to avoid falsehood.

Does Beis Hillel agree with this assertion?

Since Beis Hillel did not express disagreement on this point, it must be that they agree that the Mitzvah applies outside of Beis Din.

B2. Outside of Beis Din, the Mitzvah only applies to Talmidei Chachomim.

בבא מציעא דף כ"ג ע"ב
Bava Metzia 23b (Gemara)

דאמר רב יהודה אמר שמואל: בהני תלת מיילי עבידי רבנן דמשנו במלייהו: במסכת, ובפוריא, ובאושפיזא.

רש"י

במסכת. יש צידך מסכת פלוני סדורה בגירסא או לאו ואע"ג שסדורה היא לו יאמר לו לאו ומדת ענוה היא. בפוריא. שימשת מטתך יאמר לאו מדת לניעות הוא. באושפיזא. שאלוהו על אושפיזו אם קבלו בסדר פנים יפות ואמר לאו מדת טובה היא כדי שלא יקפלו בו בני אדם שאינן מהוגנין לבא תמיד עליו ויכלו את ממונו.

[The Gemara cites an Amoraic statement:] For Rav Yehuda said in the name of Shmuel: In only these three matters is it the practice of the Rabbis to deviate in their speech [from the truth]: [(1) in regard to knowledge of] a tractate, [(2) in regards to matters of] the bed, and [(3) in regard to] hospitality.

Rashi:

"[(1) In regard to knowledge of] a tractate:" Someone asks you: 'Do you know Masechet so-and-so very well or not?' Answer him no. This is the character trait of humility.

"[(2) In regards to matters of] the bed:" Someone asks you about if you had relations with your spouse. Answer him no. This is the character trait of modesty.

"[(3) In regard to] hospitality:" They ask you whether your host treated you well. Answer them no. This is a good character trait to prevent

undesirable guests from returning repeatedly, inundating the host and ultimately exhausting his resources.

A Talmid Chochom is a Torah scholar who has integrated his Torah knowledge into his behavior and is therefore meticulous in his speech. As seen from the Gemara, he would only speak apparent falsehood in a case of a Torah mandated leniency, such as for the sake of humility, modesty or protecting another from harm (more on this topic in “Part 3. Categories of Falsehood and Their Leniencies”).

From the case in the Gemara above one can only deduce that it is characteristic of *Talmidei Chachomim* not to lie. So even though the Mitzvah to “Distance yourself from falsehood” applies outside of Beis Din (as seen in Source B1), perhaps it has the unusual feature of only applying to Talmidei Chachomim. And perhaps the common man is not required keep the Mitzvah to “Distance yourself from falsehood.”

Having seen the cases in the Gemaras above, in the coming sources attention is focused on the different approaches among the Rishonim (literally “the early authorities,” c. 1000 CE - c. 1500 CE) as to whom the Mitzvah to “Distance yourself from falsehood” applies.

B3. The Mitzvah Applies in Beis Din

ספר המצוות להרמב"ם ל"ת רפ"א

Sefer HaMitzvos, Rambam, Negative Mitzvah no. 281: “To not hear a litigant in Beis Din when his opponent is not present”

מצוה רפ"א הזהיר השופט שלא לשמוע אחד מבעלי הדין שלא בפני בעל דינו. והוא אמרו לא תשא שמע שוא, שברוב יהיו בעלי דין שלא בפני בעל דינם והזהיר השופט משמוע אותם הדברים, כדי שלא תכנס לנפשו צורת הדברים אין יושר להם ולא אמתות ... ולהזהיר מזה הענין אמר מדבר שקר תרחק כמו שנתבאר ברביעי משבועות (דף ל"א).

Mitzvah 281: The judge [in Beis Din] is warned not to hear the claim of one litigant when the opposing litigant is not present.

Its source is from the verse “Do not accept a false report” (Shemos

23:1). Since the litigants are generally not in each other's presence, the judge is warned against hearing the words [of one litigant's claim when the opposing litigant is not present] so as not to allow a certain [biased] understanding of the issue to enter his heart, which is not upright or true. ...

And as a [further] warning against such a situation, [the Torah] said "Distance yourself from falsehood" – as explained in the fourth chapter of Gemara Shevuos (31a).

The Rambam does not count the Mitzvah to "Distance yourself from falsehood" as one of the 613 Mitzvos in the Torah. Rather he includes it in the prohibition "Do not accept a false report" (Shemos 23:1) – that a litigant should not state his claim, nor should a judge listen to it, if the other litigant is not present.

B4. *The Mitzvah Applies to Talmidei Chachomim*

רמב"ם הלכות דעות פרק ה' הלכה ז'
Mishneh Torah, Rambam, Hilchos De'os 5:7

תלמיד חכם ... לא ישנה בדבורו, ולא יוסיף ולא יגרע אלא בדברי שלום וכינצא בהן.

A Talmid Chochochom ... should not be alter his words [i.e. alter the truth], nor add or detract to the facts, other than for the purpose of promoting peace or the like.

The Rambam cites the issue of avoiding falsehood outside of court, but only within the context of a Talmid Chochochom's character traits – implying that for the common man there is no mitzvah to avoid falsehood.

(However, it is possible that the Rambam means that this Mitzvah to avoid falsehood *does* apply to everyone, but that he placed the Mitzvah in the context of a Talmid Chochochom since it represents an ideal level of behavior.)

Elsewhere, the Rambam cites the Mitzvah to “Distance yourself from falsehood” in the context of the laws of Beis Din (Sefer HaMitzvos, Source B3; Mishneh Torah, Hilchos Sanhedrin, 21:10 and 22:2, 3, 10).

B5. The root of this Mitzvah is that everyone should hate falsehood.

ספר החינוך מצוה ע”ד

Sefer HaChinuch, Mitzvah no. 74,

“To not hear a litigant in Beis Din when his opponent is not present”

שלא ישמע הדיין טענת האחד שלא בפני בעל דינו, שנאמר [שמות כ”ג, א’] לא תשא שמע שוא, והטעם לפי שבני אדם ידברו דברי שוא שלא בפני בעל דינם, וצווה הדיין על זה כדי שלא יכניס בנפשו כזביו של אחד מהם ... ועוד אמרו שם שהיא אזהרה גם לבעל הדין שלא יטעון גם הוא טענותיו לדיין שלא בפני בעל דינו, ואפילו ירצה לשמוע אותן הדיין, ועל זה נאמר גם כן [שם, ז’] מדבר שקר תרחק ... שורש המצוה ידוע, כי השקר נתעב ונאלח בעיני הכל, אין דבר מאוס ממנו, והמארה והקללות בבית כל אוהביו, מפני שהשם יתברך אל אמת וכל אשר אתו אמת, ואין הברכה מצויה וחלה אלא במתדמים אליו במעשיהם, להיותם אמיתיים כמו שהוא אל אמת, ולהיותם מרחמים כמו שידוע שהוא רחום, ולהיותם גומלי חסדים כמו שהוא רב החסד, אבל כל מי שמעשיו בהפך מדותיו הטובות, והם בעלי השקר שהם בהפך מדותיו ממש, כמו כן תנוח עליהם לעולם מה שהוא הפך מדותיו, והפך מדת הברכה שהיא בו היא המארה והקללה, והפך שמחה והשלום והתענוג שהם אתו הוא הדאגה והקטטה והצער, כל אלה חלק אדם רשע מאלהים, ועל כן הזהירנו התורה להרחיק מן השקר הרבה, כמו שכתוב מדבר שקר תרחק, והנה הזכירה בו לשון ריחוק לרוב מיאוסו מה שלא הזכירה כן בכל שאר האזהרות, ומצד הריחוק הזהירנו שלא נטה אווננו כלל לשום דבר שנחשוב שהוא שקר, ואף על פי שאין אנו יודעין בבריא שהיא אותו הדבר שקר ... ונהגת בכל מקום ובכל זמן ... וכן מוזהרות להרחיק מכל שקר כמו האנשים.

[Mitzvah Number 74 is] that the judge should not hear the claim of one [litigant] without the other litigant present, for it states: “Do not accept a false report” (Shemos 23:1). The reason [for this Mitzvah] is that people typically speak falsely outside of the presence of the other litigant. The judge is therefore commanded not to allow the lies of one of them [the litigants] to enter into his mind. ...

It states further [in the Midrash Mechilta] that [the verse] is also a warning to the litigant, that he himself should not present his claim to the judge when his opponent is not there, even [in a case] where the judge is willing to listen [albeit in transgression of the Halacha]. Regarding this [prohibition], the verse also states “Distance yourself from falsehood...”

The root of this Mitzvah is well known: falsehood is abominable and corrupt in the eyes of all. There is nothing more abhorrent than it. Desolation and curse [is found] in the home of those who love falsehood. For “Hashem, [is a] G-d of truth” [Tehillim 31:6], and all that is with Him is truth. And blessing is only found and will only take effect upon those who emulate Him in their actions; to be truthful just as He is a G-d of truth; to have compassion as it is known that He is compassionate; to be doing acts of loving-kindness just as He abounds in loving-kindness.

However, anyone whose deeds are the antitheses of His good attributes – which includes those who are habitual liars which is quite the opposite of His attributes – [these people] can expect the very opposite of His attributes to rest upon them. The opposite of the attribute of blessing, which is inherently His, is desolation and curse. The opposites of joy, peace, and pleasure which exist with Him, are worry, quarreling, and suffering. All this is “The portion from G-d to the wicked” (Iyov 20:29).

For this reason the Torah cautions us to distance exceedingly from falsehood, as it is written [in the Torah]: “Distance yourself from falsehood” (Shemos 23:7). [In giving its command,] the Torah uses the word “distance” [as a verb], which it does not do regarding any other warning, to [indicate] the disgusting nature [of falsehood].

An aspect of “distancing” is not to incline one’s ear at all to [hear] anything that one believes to be falsehood, even if [the listeners] do not know for certain that this particular matter is a lie. ...

[This mitzvah] applies in every place and at all times ... and both men and women are instructed to distance themselves from any falsehood.

According to the Sefer HaChinuch, the prohibition to “not accept a false report” (Shemos 23:1) applies to the proceedings in a Beis Din. Under this prohibition, the Sefer HaChinuch discusses the importance of truth and the destructive nature of falsehood.

The implication is that the prohibition to avoid a “false report” applies most stringently in Beis Din, but that the root and spirit of the Mitzvah teaches that *everyone*, not only Talmidei Chachomim, should hate falsehood and cling to truth. Other Rishonim (the Sefer HaMitzvos HaGadol, Positive Mitzvah 107 and Sefer HaMitzvos HaKatan, Section 227) also imply this strongly.

B6. It is obvious that the Mitzvah applies to everyone.

ספר יד הקטנה פ”י דעות סי’ א’ אות א’
Yad HaKatana, Hilchos De’os 10:1:1

ואם אמנם שכל עיקר האזהרה היא על הדיין כאשר ביארו רבותינו, זאת היא לפי שכאשר הדיין יטה עצמו לדברי שקר, הרי הורס קיום העולם, לפיכך ביותר הזהיר הכתוב על הדיין, אבל ממילא נשמע שגם שאר ההמון ירחיקו עצמם, ולכך נאמר סתם. ומלת מדבר שקר משמע כל שהוא, ומלת תרחק היא מורה על המיאוס והתיעוב, לכך הזכירה בה לשון רחוק לרוב מיאוסה, מה שלא הזכירה כן בכל שאר הזהרות.

Even though the warning applies to judges, as our Rabbis explained, this is only due to the fact that when a judge inclines himself in the direction of falsehood it destroys the foundation of the world. The verse [in the Torah] is therefore more [emphatic] in its warning to a judge, however it is obviously implied that the rest of the populace should also distance themselves [from falsehood]. Therefore, [in order to imply that both a judge and the rest of the populace are included in this Mitzvah, the verse] is stated in unspecific terms.

The phrase [in the verse “m’dvar sheker,” is literally translated as] “from a matter of falsehood” and implies even most inconsequential falsehood [must be avoided]. And the word “tirchak” [“distance yourself”] teaches the disgusting and abominable nature [of falsehood]. Therefore, [in giving its command,] the Torah uses the word “distance” [as a verb], which it does not do regarding any other warning, to [indicate] the disgusting nature [of falsehood].

The Yad HaKatana explains that the reason that the Mitzvah is addressed to judges is because of the great moral and social destruction that could result from falsehood in Beis Din. However, the verse never said specifically that “a *judge* should distance himself from falsehood,” but rather it said “*you* should distance yourself from falsehood” – referring to everyone.

The Yad HaKatana adds that even the smallest and most inconsequential falsehood must be avoided, and to indicate the terrible nature of falsehood, the Torah reserves a unique expression of “distancing” for this Mitzvah. destruction that could result from falsehood in Beis Din. However, the verse never said specifically that “a *judge* should distance himself from falsehood,” but rather it said “*you* should distance yourself from falsehood” – referring to everyone.

The Yad HaKatana adds that even the smallest and most inconsequential falsehood must be avoided, and to indicate the terrible nature of falsehood, the Torah reserves a unique expression of “distancing” for this Mitzvah.

B7. The Mitzvah applies to everyone, and the only disagreement is whether it is counted in the 613 Mitzvos.

פתיחה לספר חפץ חיים עשין י"ג ובאר מים חיים שם
Sefer Chofetz Chaim, Introduction, Positive Mitzvos no. 13,
and Be'er Mayim Chaim 13

אבל אם בתוך הלשה"ר או הרכילות שלו נתערב תערובות של שקר במקצתו, עובר ג"כ על מ"ע שכתוב בתורה מדבר שקר תרחק.

באר מים חיים אות י"ג

וכל זה שדברנו וכו' תערובות של שקר. וראיה משבועות ל"א בכל הצוירים של הגמרא, דשם הוא אפילו רק נראה כעין שקר, וכל שכן תערובות של שקר ממש בודאי דעובר, והיא מצות עשה גמורה לדעת הסמ"ג עשין ק"ז, ועל כל פנים איסורא דאורייתא הוא לכל הדיעות.

... but if intermingled in one's derogatory speech [Lashon HaRah] or tale bearing [Rechilus] is an admixture of falsehood [even] in the smallest

amount, then the speaker also transgresses a positive commandment, as it is written in the Torah: “Distance yourself from falsehood.”

Be’er Mayim Chaim, note 13:

(13) “And all that we have stated [that there is a prohibition against derogatory speech, applies even if what one is saying is true, but if there is] an admixture of falsehood [one also transgresses a positive Mitzvah].”

The proof is from the cases listed in Gemara Shevuos [page] 31 [Source A2]. There [in those cases, falsehood is prohibited] even if it just *appears* like a form of falsehood; all the more so [in a case where one’s words] are mixed together with outright falsehood is one transgressing [the Mitzvah to “Distance yourself from falsehood”].

According to the S’mag [Sefer HaMitzvos HaGadol], in Positive Mitzvah Number 107, this [Mitzvah to “Distance yourself from falsehood”] is a positive Mitzvah [counted amongst the 613 Mitzvos of the Torah].

[And even if according to some opinions it is not one of the 613 Mitzvos,] it is certainly a Torah prohibition [the prohibition is implied by the command to avoid falsehood, referred to as an “issur aseh”] according to all opinions.

The Chofetz Chaim states that according to all opinions it is a Torah prohibition to lie (even outside of Beis Din). The only disagreement among the Rishonim is concerning its inclusion in the count of the 613 Mitzvos.

C. CATEGORIES OF FALSEHOOD AND THEIR LENIENCIES

As shown above in Kesubos, Source B1 and Bava Metzia, Source B2, and as shall be seen in the next source, in certain situations it is permitted to alter the truth if it is done in a way that has no negative consequences and does not affect anyone’s interests (further conditions to this leniency will be discussed in Chapter 2).

C1. The Truth Can be Altered for the Sake of Peace

יבמות דף ס"ה ע"ב Yevamos 65b (Gemara)

וא"ר אילעא משום רבי אלעזר בר' שמעון: מותר לו לאדם לשנות בדבר השלום, שנאמר: אביך צוה וגו' כה תאמרו ליוסף אנא שא נא וגו'. ר' נתן אומר: מצוה, שנאמר: ויאמר שמואל איך אלך ושמע שאול והרגני וגו'. דבי רבי ישמעאל תנא: גדול השלום, שאף הקדוש ברוך הוא שינה בו, דמעיקרא כתיב: ואדוני זקן, ולבסוף כתיב: ואני זקנת.

And R' Ilai said in the name of R' Elezar the son of R' Shimon: "It is permitted to alter [one's words] for the sake of peace, as the verse says [Bereishis 50:16-17], 'Your father [Yaakov] gave orders [to us, your brothers, before his death, saying:] Thus shall you say to Yosef: Please forgive [the sin of your brothers against you]'. [Yaakov had never made such a request of Yosef, yet the brothers fabricated it in order to create peace between themselves and Yosef].

R' Nosson says: "It is a Mitzvah [to lie for the sake of peace], for it is stated [in Shmuel I 16:2]: And Shmuel said, 'How can I go [and anoint David as the new king] for Shaul will hear and he will kill me?'" [To which Hashem replies, "Take along a cow, and say, 'I have come to bring an offering to Hashem,'" thus avoiding any suspicion of going to anoint David as king].

The School of Rabbi Yishmael taught in a Baraisa: "Great is peace, for even The Holy One Blessed is He, alters [words] for its sake. Originally, it is written [Bereishis 18:12-13], "[Sarah said...] and my husband is old," but in the end [when Hashem quotes Sarah's words to Avraham] it is written "and I [Sarah] am old."

It is permitted, and perhaps even a Mitzvah, to alter the truth for the sake of peace – peace between brothers (as in the case of Yosef's brothers), between enemies (as in the case of David and Shaul), or between husband and wife (as in the case Avraham and Sarah).

Does this mean that a devious means (lying) can be justified by a noble end (peace)?

The real meaning of this leniency is that in certain Torah-mandated situations (for example, the pursuit of peace), an alteration of the truth is not considered a deviation from Emes, but rather is an expression of Emes as defined by Divine wisdom. When the requirement to speak accurately is correctly balanced against other Torah ideals, such as the pursuit of peace, and avoiding damage to others, the result *is* Emes. But outside of these Torah-mandated situations such an alteration of the truth would be considered falsehood.

What if altering the truth will result in the desired goal of peace, or the like, but *at the same* time it will negatively affect someone else, like causing them embarrassment?

The two next two sources will demonstrate the limitations to this leniency – not every altering of the truth is permissible for the sake of peace.

C2. Two Types of Falsehood: Inconsequential Falsehood and Harm-causing Falsehood

ספר יראים סימן רל"ה
Sefer Yeraim, Mitzvah 235

מדבר שקר תרחק. צוה יוצרינו בפ' ואלה המשפטים מדבר שקר תרחק חייב להתרחק מכל שקר שיוכל לבוא שקרו לידי היוק חבירו וצריך לתת לב בזה הענין ... אבל שקר שאינו בא לידי רעה לא הזהירה התורה עליו ...

“Distance yourself from falsehood.” Our Creator has commanded us in Parshas Mishpatim to “Distance yourself from falsehood.”

One is obligated to distance oneself from any falsehood that has [in its power] the ability to bring about harm to one’s fellow. And one must pay [particular] attention to this matter. ...

But falsehood that does not cause negative [consequences to another] is not forbidden by the Torah. ...

According to the Sefer Yeraim, the Torah only prohibits falsehood in a case where it affects others negatively in some way. Would this imply that inconsequential lies are always permissible? The next source will clarify.

C3. Inconsequential falsehood is permitted only for a Mitzvah or the pursuit of good and peace.

ספר שערי תשובה לרבינו יונה שער ג' מאמר קפ"א
Sha'arei Teshuvah 3:181

קפ"א החלק הרביעי המשקר בספור הדברים אשר שמע ומחליף קצתם במתכוין, ואין לו תועלת בשקריו ולא הפסד לזולתו, אבל כה משפטו מאהבתו שקר מדבר צדק סלה, ופעמים שהוא בודה מלבו ספור הדברים כולו. והאיש הזה יקל ענשו מצד אחד, על כי אין הפסד לאיש בשקריו ופחזותו, אבל גדול מאד ענשו בעז פניו ואהבת השקר, ויכבד עונו, כי יאהבהו לבלי תועלת ... וזה החלק התירוהו לקיים מצות ודרישת טובה ושלום. ואמרו (כתובות יז, א): כי מותר לשבח הכלה לפני החתן ולאמר שהיא נאה וחסודה אף על פי שאינו כן. ואמרו (יבמות סה, ב): מותר לשנות בדברי שלום, שנאמר (בראשית נ, טז - יז): "אביך צוה לפני מותו לאמר כה תאמרו ליוסף אנא שא נא וגו'".

The fourth category [of falsehood is]: one who intentionally lies in relating a story that he heard and changes [the facts] around a little. He has no benefit from his lies, and it doesn't damage anyone else, but it is his habit to love falsehood rather than speaking truth. Sometimes he will fabricate a completely fictional story from his heart.

For such a person – on the one hand his punishment is lightened, since there is no damage to anyone due to his lies and haste [in speaking falsehood], but [on the other hand] his punishment is very great due to his brazenness and love of falsehood, and his sin is magnified because he loves it [falsehood] even when there is nothing to be gained. ...

This category of falsehood was made permissible [by the Rabbis] to

- [1.] fulfill a Mitzvah, and
- [2.] for the pursuit of good and peace.

[As supporting evidence for this leniency, the following two cases in the Gemara are cited:] They [the Rabbis] said (Kesubos 17a) that it is

permissible to praise the bride in the presence of the groom saying she is beautiful and charming, even though it may not be so. [A second support:] They [the Rabbis] said (Yevamos 65b) that it is permissible to change one's words in a matter [that requires the pursuit] of peace, as it is stated (Bereishis 50:16-17): "Your father [Yaakov] gave orders [to us, your brothers before his death, saying]: 'Thus shall you say to Yosef: Please forgive [the sin of your brothers against you].'"

According to Rabbeinu Yona, inconsequential falsehood is prohibited if such falsehood serves no constructive purpose. However, it is permissible if there is a need. A valid need would be in order to fulfill a Mitzvah or for the pursuit of peace or marital harmony (Yevamos, Source C1). However, a lie that affects another person negatively (for example, emotionally or financially) is prohibited even for the pursuit of a Mitzvah or peace.

D. ENSURING THAT THE MESSAGE IS ACCURATE, EVEN THOUGH THE WORDS MAY NOT BE

In all communication there is a difference between the *words* spoken (or not spoken, as in the case of remaining silent) and the *message* understood by the listener or observer.

As seen above, even if one says nothing, one can be guilty of deception and silence is forbidden by the Mitzvah to "Distance yourself from falsehood" (Shevuos, Source A2; cases 5, 6 and 7). Thus, the meaning of the Mitzvah to "Distance yourself from falsehood" is that it's not enough to just make sure one's words are precise.

Rather, the essence of this Mitzvah is to ensure that the *message* understood by the listener will be true and accurate, even if the words are not exactly precise. For example: if one's fellow will be deceived, there is a stringency in that one may not remain silent (and all the more so not speak deceptively). On the other hand if no one is being deceived, there is a leniency in that there is no prohibition against imprecise speech. The following two sources will illustrate this point.

D1. A blatant exaggeration is not a distortion of truth since everyone understands it as such.

נדרים דף כ"ד ע"ב ור"ן

Mishnah Nedarim 24b, Ran ibid.

מתני'. נדרי הבאי: אמר קונם אם לא ראיתי בדרך הזה כעולי מצרים, אם לא ראיתי נחש כקורת בית הבד.

ר"ן. דכי אמר קונם עלי פירות אם לא ראיתי בדרך הזה כעולי מצרים בדין הוא דלא לתסרו עליה דקושטא קאמר כיון שראה עם רב דעביד איניש דגוים בכי האי גוונא

Mishnah:

[The following are examples of] vows of exaggeration:

[1. One who says "This fruit is forbidden to me like a] *konam* [a sacrificial animal which is prohibited for personal consumption], if I did not see on this road [as many people as the amount] that left Egypt [i.e. 600,000 men and their families]," or

[2. One who says "This loaf of bread is forbidden to me], if I didn't see a snake as [large as] the beam of an olive press."

Ran:

When he says "This fruit is forbidden to me, if I did not see on this road [as many people as the amount] that left Egypt," the ruling is that [the fruit] is *not* forbidden to him, because he spoke truth, since he did [indeed] see a large number of people, [and] because it is normal for people to exaggerate in such a manner.

Where it is normal to exaggerate – and everyone understands it as a blatant exaggeration and not a reflection of what actually happened – then it is not a distortion of the truth. It is as if the person speaking has a new expression in the language, in which the phrase "a snake as large as an olive press beam" means "a very large snake." Such a phrase is not falsehood, but rather a commonly accepted expression.

D2. An exaggerated personal title is acceptable if it is commonly used in that time and place.

שדי חמד מערכת חית כלל ק"מ
S'dei Chemed, Section 8, Principle 140

כלל ק"מ חנופה. מה שנשתרבה המנהג בדורינו להפליג ולהרבות בתוארים הרב הגאון המפורסם, הגאון הגדול, הגאון האמתי, וכיוצא זה כמה אשר שומה בלבי כי לא נכון הדבר, ויש בזה משום חשש חנופה ולא איסתייעא מלתא לעמוד על הפרק פרק זה בורר דין זה אם יש לחוש בזה או לא, ודרכי היה לצמצם בתוארים בכל מאי דאפשר ולא לכתוב תואר הגאון זולת לגדולים המפורסמים בדורינו יחיו. אך ראיתי ... עצה טובה קמשמע לן לכתוב תואר גאון לכל אשר בשם רב יכונה כי העדר תואר זה נחשב להעדר כבוד בדורינו.

That which has become the norm in our generation – namely to exaggerate and increase the title of a rabbi, such as *The Famous Genius* [as in “ha’ga’on ha’mefursam” – in the Era of the Ga’onim, c. 600 - 1000 C.E., one acquired this title if one was expert in the 60 tractates of the Mishnah, hinted to in the fact that the word “ga’on” has the numerical value of 60 in Gematria], *The Great Genius*, *The True Genius* and similar examples – I assumed these titles to be inappropriate and even a possible violation of [the prohibition of] flattery.

I was unable to come to a conclusion on this issue after looking into [other sources] as to whether there is indeed a possible violation [of flattery] or not.

[So] I was accustomed to minimizing [the grandiose] descriptions [of Rabbis] wherever it was possible, and to not writing the title *Genius*, except for [the most] famous and greatest leaders of our generation, long may they live.

However, I have seen a good solution to this issue which to write the title *Genius* [referring] to anyone with the title *Rabbi*, since [one can reason that] a lack of such a title is considered a lack of honor and respect in our generation.

One needs to consider the normal use of language in a particular place and time in order to judge whether an exaggerated or seemingly undeserved title is falsehood (or flattery). In a time and place where most Rabbis also have the title *HaGa'on*, as in *HaRav HaGa'on*, it would be considered a lack of honor not to write this extra title.

DRAFT

E. SUMMARY

A. The Mitzvah to distance oneself from falsehood.

“Distance yourself from falsehood” (Shemos 23:7, Source A1) is the Torah’s command to disassociate oneself from falsehood.

The Gemara (Shevuos, Source A2) shows that this Mitzvah applies in a Jewish court of law (Beis Din), where even subtle cases of falsehood are prohibited, such as: using unjust means to claim what one is rightfully owed, presenting oneself outside of Beis Din if the opposing litigant will think you are a second witness, remaining silent when one has an argument that could affect the ruling, and having one litigant dress in a fine clothes and the other in rags.

B. To whom this Mitzvah applies.

The Mitzvah to “Distance yourself from falsehood” also applies outside of Beis Din (Kesuvos, Source B1). It is especially applicable to Talmidei Chochamim who are meticulous in their conduct and speech (Mishneh Torah, Source B4).

The Rambam writes that only a Beis Din and a Talmid Chochom are commanded to fulfill this Mitzvah (Sefer Ha Mitzvos, Source B3; Mishneh Torah, Source B4). Others write that it is obvious that *everyone* should avoid falsehood (Yad HaKatana, Source B6), especially in light of its destructive nature and the fact that one can only emulate G-d if one has a love for truth, since he is “the G-d of truth” (Sefer HaChinuch, Source B5).

Finally, the Chofetz Chaim writes that really, all agree that the Torah Mitzvah to “Distance yourself from falsehood” applies to everyone (a judge in a Beis Din, a Talmid Chochom *and* the common person), and the only argument is whether it is counted as one of the 613 Mitzvos (Sefer Chofetz Chaim, Source B7).

C. Categories of Falsehood and their Leniencies.

There are two categories of falsehood:

1. Inconsequential falsehood, and
2. Falsehood that causes harm to someone else (Sefer Yeraim, Source C2).

The first category, inconsequential falsehood, is permitted and perhaps even a Mitzvah in the following cases:

1. To pursue peace, including the pursuit of peace between enemies, brothers or a married couple (Yevamos, Source C1; Sha'arei Teshuvah, Source C3).
2. To fulfill a Mitzvah (Sha'arei Teshuvah, Source C3).
3. To ensure one acts and speaks with humility (Bava Metzia, Source B2).
4. To ensure one acts and speaks modestly, being discrete about one's intimate life (ibid.).
5. To protect another from harm (ibid.).
6. To praise a bride to her groom (Kesubos, Source B1).

Outside of these types of situations, there is no leniency gained by the fact that the lie has no consequences, and would be considered an outright falsehood (Sha'arei Teshuvah, Source C3).

The second category, falsehood that causes harm to someone else, is prohibited even for sake of peace or fulfilling a Mitzvah as in the examples above (ibid.).

D. Ensuring that the message is accurate, even though the words may not be

In judging whether speech or action (or lack thereof) is falsehood, what counts is the message understood by the listener (or observer). For example: if one's fellow will be deceived, it is prohibited to remain silent (Shevuos, Source A2). On the other hand if no one is being deceived, there is no prohibition against silence or imprecise speech.

Thus the prohibitions against falsehood do not apply to blatant exaggerations, since the listener understands what one is saying even if the words are not precise. For example: "there were a million people there," or "the snake was as big a tree trunk" (Mishnah Nedarim, Source D1). Similarly, over inflated titles are not falsehood or flattery if they are commonly used (for example, *HaRav HaGa'on*, even though he may not be an actual Ga'on) (S'dei Chemed, Source D2).

Communicating a truthful message as well as ensuring that the words are precise, is the highest level of "Distancing oneself from falsehood." In

Olam HaZeh (this world), where the considerations of modesty, peace and the like require us to alter the truth for these Torah ideals, this highest level is worthy of striving for, but may not be attainable (The reader can look this up in: Maharal, Nesiv HaEmes, chapter 1, citing Sanhedrin 97a and the Aggadic account of Rav Tavos there).

DRAFT

F. PRACTICAL QUESTIONS AND SUGGESTED ANSWERS

Note to the reader: The aim of this work is to give the reader an introduction to the Torah guidelines to interpersonal relationships. As always, to gain a practical ruling (Psak) for a given case, an Orthodox Rabbi or Posek should be consulted.

QUESTION 1: While at work, you are talking on the telephone with a close friend about a very private issue. After you finish, your work colleague asks: "So, what were you were talking about?" You feel uncomfortable sharing it with him; on the other hand if you say "It's not really any of your business," you are afraid it might cause a rift. Can you alter the truth about the telephone conversation?

For the sake of peace, one can alter the truth in way which is inconsequential and will not affect anyone else. But, even so, it is better to be vague or change the subject (Orchos Tzadikim, Chapter 2, Source C3).

QUESTION 2: You are writing the answers to a test, and you do not know the answers to some of the questions. Is it permissible to *guess* and write something, because then at least there is a chance you wrote the correct answer?

Even though the examiner may give you points to questions whose answers you really did not know, it is permissible to guess. Since it is expected that one may guess on some questions, in this situation it is a permissible way to communicate. This is similar to a case in which exaggerating is permissible, since even though the words are not accurate, it is an acceptable way to communicate (as in Mishnah Nedarim, Source D1; S'dei Chemed, Source D2).

QUESTION 3: You want to send Matzah in a box via UPS delivery service. You do not want it to get broken, so you write "glass" on the outside. Your friend asks "Isn't that a lie?" Which of the following could you answer back?

Option 1: “It does not say there is glass *inside*, so it is not a lie.”

A lie is determined by what’s understood by the listener. If the UPS delivery person will think that it contains actual glass, then writing “glass” on the outside of the box is falsehood.

Option 2: “Writing ‘glass’ just means that the contents are fragile, not that there is really glass inside.”

Again, a lie is determined by what’s understood by the listener. If the UPS delivery person understands that “glass” just means fragile (and not that the actual contents are made of glass), then this is not falsehood.

Option 3: “Although the UPS person thinks it is really glass, it’s permissible because it makes no difference to him whether it’s glass or something else that’s fragile.”

One should not speak even inconsequential falsehood (*sheker shel ma’b’kach*) unless it is for the sake of pursuing peace, or fulfilling a Mitzvah of the like (Sefer Yearim, Source C2; Sha’arei Teshuvah, Source C3).

Option 4: “It is permissible to alter the truth for a D’var Mitzvah (to enable the accomplishment of a Torah directive).”

This is acceptable (Sha’arei Teshuvah, Source C3). However, if there is another way to convey to UPS that the package is fragile (such as by writing “fragile”), one should not write “glass.”

QUESTION 4: The time is presently 5:29:45 pm. Someone asks you “What’s the time?” Which of the following should you answer back?

Option 1: “5:29?”

Option 2: “About 5:29?”

Option 3: “5:30?”

Option 4: Do you have to answer “5:29:45?”

All are permissible, since people generally are not accurate down to the minute, and the common way of speaking is within a 5-minute range. However, if the person needs to be accurate to the minute, then one should answer him accurately.

QUESTION 5: Someone asks you “What time is Sh’kiah?” (Sh’kiah is Halachic sunset, the latest time one can finish the afternoon Mincha prayer.) Sh’kiah is at 5:29:45 pm. Which of the following should you answer back?

Option 1: “5:29.”

Permissible. One does not need to answer “5:29:45 pm.”

Option 2: “5:30”

Prohibited. Since he may miss the opportunity to finish praying Mincha before Sh’kiah, you might be causing him a loss. Further, people are accurate down to the minute in matters regarding the Halachic times of day.

Option 3: “About 5:30”

Permissible, since he will take a precaution to finish praying Mincha earlier than this time.

QUESTION 6: The following story is told: When the glass of a guest at Rabbi Akiva Eiger’s table fell over, Rabbi Eiger caused the same to happen to his glass, and blamed it on an uneven table, so that the guest should not be embarrassed.

Can you tell the story if you are *not sure* if it is true?

Yes, because it is for the Mitzvah of sensitizing others to not embarrassing people, which is a Torah prohibition (Sha’arei Teshuvah, Source C3).

QUESTION 7: Is it falsehood if you say: “He is as tall as a skyscraper” or “The entire city came to the wedding”?

No, this is not falsehood. Exaggeration is permitted where it is obvious to the listener what the intended message is. Further, the above examples are acceptable ways to speak (Mishnah Nedarim, Source D1; S'dei Chemed, Source D2).

QUESTION 8: You are renting an apartment and the telephone line is in the name of your landlord. You want to take part in a cheaper international calling program from the telephone company. They ask you if the line is in your name (which it needs to be to join). Is it permissible to lie?

Even though you may not be causing the telephone company a financial loss, the Torah nevertheless prohibits speaking falsehood anytime it will cause an injustice (“avel” or in Hebrew **עול**, as described in the next paragraph). In this case, violating their “terms and conditions of offer” (which one can assume the telephone company is particular about enforcing) is an injustice against them. This lie therefore falls in the category of harm-causing falsehood and is prohibited.

The concept of an “avel” is derived from the cases in Beis Din (Shevuos, Source A2). Violating the rules of honesty and fair treatment in Beis Din is considered an injustice (“avel”) and is prohibited, even if no one loses out unfairly. Similarly, violating the rules of a business contract (or even the unspoken social contract that exists in all social interactions) is considered an injustice, even if the no one loses out. Since it is an injustice, it is considered a harm-causing falsehood, even though no identifiable person is being damaged financially or personally.

What if you would be able to fulfill the mitzvah of honoring one’s mother and father who are overseas?

It is still prohibited. Harm-causing falsehood is not permissible for the fulfillment of a Mitzvah.

QUESTION 9: You are applying for a loan from a Gemach (Jewish interest-free loan fund; contraction of the words “Gemilus Chassadim,” “acts of kindness”) so you can have money to pay for college. They only give out loans to help people

pay for a down payment on a house. Is it permissible to deceive them if there *will not* be enough money for other people?

Prohibited. Since you're causing a loss to another potential loan applicant, this is harm causing falsehood.

What if there *will* be enough money for others?

Prohibited, since one is violating the rules of the Gemach which considered is an injustice ("avel") against them. This lie therefore falls in the category of harm-causing falsehood and is prohibited. See Answer 8 for more about the concept of an Avel.

CHAPTER 2

אנכי עשו בכורך

Dealing with a Fraud – I am Eisav Your Firstborn

Introduction

With a Torah directive to “Distance yourself from falsehood” (Shemos 23:7), what does one do in the following situations:

- The taxi driver wants to charge you another \$5 for your coat. Do you have to pay or can you tell him: “I just don't have the money” (when in fact you do)?
- You're selling your house. A business associate wants to manipulate you into selling it to him for a lower price and threatens to spread slander about you amongst your business clients. Can you tell him that the house is no longer available because you already signed with another buyer (when in fact you didn't)?
- A thief wants to know where your money is hidden or where you're hiding his intended victim – is it called “honesty” to tell him the truth?

As was seen in Chapter 1, the Mitzvah to “Distance yourself from falsehood” is the Torah's prohibition against falsehood (Chofetz Chaim, Chapter 1, Source B7). The only debate that existed among the Rishonim (early authorities, c. 1000 CE to c. 1500 CE) was whether this prohibition is counted as one of the 613 commandments or not.

There are certain situations where the Torah allows one to alter the truth, for example: for the sake of peace, fulfilling a Mitzvah or the like (but outside of these situations, such an “alteration” would be outright falsehood). Even so, this leniency only applies to inconsequential falsehood (where no one else is negatively affected), but harm-causing falsehood is prohibited even for the sake of peace or a Mitzvah (Sha'arei Teshuvah, Chapter 1, Source C3).

Therefore, unless one is involved in pursuing peace or a Mitzvah, one has to be careful at all times to be accurate with one's speech and actions so as not to communicate even inconsequential falsehood.

What if, as in the three cases above, one is dealing with someone who is *not* careful with the truth – someone who wants to claim property as his own, such as an outright liar, thief or extortionist? When does honesty become naiveté? Is it really called “truthful” to reveal where the victim is hiding?

On the other hand, by reciprocating with deception, is one not descending to the same depraved moral level of the fraud? And, further by resorting to deception, would this not be a harm-causing lie (which the Torah prohibits without exception) since the liar is being deprived of what he is claiming?

This chapter has six parts:

- A. Deceiving a Liar, Thief or Extortionist
- B. The Justification for Counter-Deception
- C. Conditions for Deceiving a Liar, Thief or Extortionist
- D. Altering Torah Law
- E. Summary
- F. Practical Questions and Suggested Answers

A. DECEIVING A LIAR, THIEF OR EXTORTIONIST

There are a number of cases and Halachos that seem to allow outright falsehood and deception.

A1. Deceiving a Non-Jewish Thief Who is Pretending to be a Jew

פסחים דף ג ע"ב
Pesachim 3b (Gemara)

ההוא ארמאה דהוה סליק ואכיל פסחים בירושלים, אמר כתיב כל בן נכר לא יאכל בו, כל ערל לא יאכל בו ואנא הא קאכילנא משופרי שופרי. אמר ליה רבי יהודה בן בתירא: מי קא ספו לך מאליה? אמר ליה: לא. כי סלקת להתם אימא להו: ספו לי מאליה. כי סליק אמר להו: מאליה ספו לי. אמרו ליה: אליה לגבוה סלקא. אמרו ליה: מאן אמר לך הכי? אמר להו: רבי יהודה בן בתירא, אמרו: מאי האי דקמן? בדקו בתריה ואשכחוהו דארמאה הוא.

רש"י:

מי קא ספו לך. כלום נותנין לך מן האליה לאכול אין נותנין לך אלא מן הכחוש שבו ונתמוון להטעותו לכשילך עוד ישאל מן האליה וציד ר' יהודה בן בתירא לא היה להורגו: ספו לי האליה. הלעיטוני מן האליה וכבש היה ואליתא קריבה לגבוה דכתיב (ויקרא ג) האליה תמימה: ר' יהודה בן בתירא. קאמר לי שאין אחס נותנים לי חלק יפה אלא מן הכחוש ואני נתתי דמים כמו כן: מאי דקמן. מה הדבר הזה שצא לפנינו:

There was a [non-Jewish] Aramean who would go up and eat Pesach offerings [a lamb eaten by Jews on Erev Pesach] in Jerusalem.

He [once] said [boastfully to R' Yehudah ben Beseirah]: "It is written [in the Torah, Shemos 12:43], 'no non-Jew may eat from it [i.e. the Pesach offering,]' [and in Shemos 12:48 it is written] 'no uncircumcised male may eat from it'. But I, why I eat from the best of the best [cuts of the Pesach offering]!"

R' Yehudah ben Beseirah asked him: "Do they feed you from the fat tail [which is the choicest portion?]." He replied, "No." [R' Yehudah ben Beseirah then told him the following,] "When you go up to there [again], tell them, 'Feed me from the fat tail.'"

When he [the Aramean] went up [again] he told them, “Feed me from the the fat tail.” They said to him [in surprise]: “The fat tail goes up to the Most High [i.e. it is burned on the altar]!” They asked him, “Who told you this [i.e. to ask for the fat tail]?” He told them: “R’ Yehudah ben Beseirah [told me to ask for it.]”

They said [among themselves]: “What is this before us [i.e. R’ Yehudah ben Beseirah’s suggestion was contrary to Halacha]?” They investigated him and they discovered that he was an Aramean.

A non-Jew is prohibited from eating the meat of an animal offered in the Temple (it is considered stealing from Temple property). In the case of the Gemara, R’ Yehudah ben Besaira encountered a non-Jew who was fooling people into believing he was Jewish so that he could eat the meat of the Pesach offering.

R’ Yehudah was physically unable to stop the imposter. Instead, R’ Yehudah deceived the non-Jew into believing that the fatty tail of a lamb is permissible for Jews to eat, when in fact it gets burnt on the altar.

When the non-Jew later requested the tail from the group he was eating with in Jerusalem, their suspicions were aroused, his lineage was checked and he was found to be an impostor caught in the act of eating sacrificial meat.

A2. Deceiving a Thief to Recover One's Property

יומא דף פ"ג ע"ב
Yoma 83b (Gemara)

רבי מאיר ורבי יהודה ורבי יוסי הוו קא אזלי באורחא, רבי מאיר הוה דייק בשמא רבי יהודה ורבי יוסי לא הוו דייקו בשמא. כי מטו לההוא דוכתא בעו אושפיזא, יהבו להו. אמרו לו: מה שמך? אמר להו: כידור. אמר: שמע מינה אדם רשע הוא, שנאמר כי דור תהפכת המה. רבי יהודה ורבי יוסי אשלימו ליה כיסייהו רבי מאיר לא אשלים ליה כיסיה. אזל אותביה בי קיבריה דאבוה אתחזי ליה בחלמיה: תא שקיל כיסא דמנחא ארישא דההוא גברא. למחר אמר להו: הכי אתחזי לי בחלמאי! אמרי ליה: חלמא דבי שמושי לית בהו ממשא. אזל רבי מאיר, ונטריה כולי יומא ואייתיה. למחר אמרו לו: הב לן כיסן! אמר להו: לא היו דברים מעולם. אמר להו רבי מאיר: אמאי לא דייקתו בשמא? אמרו ליה:

אמאי לא אמרת לן מר? אמר להו: אימר דאמרי אנא חששא, אחזוקי מי אמרי? משכוחו ועיילוהו לחנותא, חזו טלפחי אשפמיה, אזלו ויהבו סימנא לדביתהו, ושקלוהו לכסייהו ואייתו. אזל איהו וקטליה לאיתתיה.

רש"י:

דייק בשמא. בשמו של בעל הבית חס נאה חס כעור:

אשלימו ליה כיסייהו. ערב שבת היה והפקידו אללו כיסם:

רבי שמושי. של ערבי שבתות:

לית בהו ממשא. מתוך שאדם במנוחה מהרהר ורואה חלומות ומתכוון היה לדחותו שלא ילך ויטלנו:

חזו טלפתי אשפמיה. ראו עדשים על שפמו:

יהבו סימנא לדביתהו. בעליך אמר שתני לנו כיסינו וזה לך סימן שאכלתם היום עדשים:

מים ראשונים האכילו בשר חזיר. פונדק ישראל היה מוכר לישראל דברים המותרים ומאכילם ומוכר לנכרים

בשר חזיר מבושל בן ישראל לפונדק וראהו שלא נטל ידיו כשהסב לאכול ונתן לפניו בשר חזיר:

R' Meir, R' Yehudah, and R' Yose were traveling on the road. R' Meir would examine the name [of the owner of the lodgings where they intended to stay to see if he was reputable, but] R' Yehudah and R' Yose would not examine [his] name.

When they came to a certain place, they asked for lodging, [and] they were given [lodging]. They asked [the owner], "What is your name?" He said to them, "Kidor." [R' Meir] said [to himself], "Infer from this that he is a wicked man," as it is stated: "For they are a generation ['ki dor] of reversals [children in whom I have no trust]." [Devarim 32:20]

R' Yehudah and R' Yose, [who were not particular about names,] entrusted their purses to him [for safekeeping over Shabbos]. R' Meir, [however,] did not entrust his purse to him; [instead] he went [and] placed it by the grave of [his host's] father.

[That evening the host's father] appeared to [the host] in a dream [saying], "Come take the purse that is lying by the head of that person [i.e. by my head]." The next day, [the host] said to them, "This is what was revealed to me in my dream." They said to him, "A dream of Friday evening had no substance [since a person is relaxed on Friday night, his mind tends to wander and he dreams]." R' Meir went [to the grave], and guarded [his purse] the entire day, and brought it back [after the Sabbath].

The next day, [R' Yehuda and R' Yose] said to [the host], "Give us [back] our

purses.” He said to them, “It never happened,” [i.e. you never entrusted your purses with me.] R’ Meir said to them, “Why do you not examine names?” They said to him, “Why did master not tell us [to distrust this man?]” [R’ Meir] answered them: “When I said [that one should be particular about names, I meant only that] suspicion [is warranted in the case of someone with an unseemly name. But with regard to] establishing [him as a wicked person,] did I [ever] say [such a thing?]”

They took him [the host] and brought him into a store [and gave him wine to drink.] They saw lentils on his mustache. They went and gave this as a sign to his wife [that her husband wants her to return their purses. They said to his wife: “Your husband says that you should return our purses, and so that you will know that we are telling the truth, he told us to mention that the two of you at lentils today.”] They took their purses and brought [them to the host and confronted him, whereupon] he went and killed his wife.

R'Yehudah and R' Yose deposited their money with the innkeeper with whom they were lodging over Shabbos. When they requested the money back, the innkeeper denied ever having received it.

That day they saw left over lentils from a meal on the innkeeper's lips. To retrieve their money, they approached the inn keeper's wife and fabricated the following lie: “Your husband has instructed you to return our money. So that you believe us, he told us a piece of information that only you and he could know: that you and he ate lentils today.”

A3. Deceiving a Laborer Who Chooses to Renege on a Work Agreement

בבא מציעא דף ע"ה ע"ב - עו ע"א
Mishnah Bava Metzia 75b, Gemara 76b

מתני'. השוכר את האומנין והטעו זה את זה אין להם זה על זה אלא תרעומת. שכר את החמר ואת הקדר להביא פרייפרין וחלילים לכלה או למת, ופועלין להעלות פשתנו מן המשרה, וכל דבר שאבד, וחזרו בהן מקום שאין שם אדם, שוכר עליהן או מטען.
גמ'. כיצד מטען? אומר להן: סלע קצצתי לכם באו וטלו שתים.

רש"י:

השובר את האומנין והטעו זה את זה. מפרש בגמרא:
 שכר את החמר או את הקדר להביא פרייפרין וחלילין. קדר בעל קרון:
 פרייפרין. עלים משופים וגאים לעשות לו אפריון:
 חלילין לכלה. לשמח חתן וכלה: או למת: לקונן:
 משרה. רוי"ש מים ששורין בהן קצבום ופשתן כשהן בגבעולין:
 מקום שאין אדם. שאינו מולא פועלין לשכור והפשתן אבד והוא סמך עליהם:
 שובר עליהם. בני אדם צוקר ועליהם לשלם:
 או מטען. מפרש בגמרא:

Mishnah:

If one hires craftsmen and they deceived one another, they can have nothing but complaints against one another; [they have no monetary claim.]

[The Mishnah proceeds to discuss workers who renege on their commitment to work and thereby cause some sort of loss to their employer:]

If one hired a donkey driver or a wagon driver to deliver planed wood [for the construction of a bridal canopy], or [to deliver] flutes for a bride [to be played at the wedding canopy to bring to the bride and groom] or for the dead [to be played at the funeral to bewail the deceased], or [if one hired] workers to remove his flax from [its] steeping [waters in which it is soaked to loosen the fibres], or [he hired them to do] anything, which, [if not performed would cause a] loss, and they reneged on [their commitment] [and refused to work, the law is as follows]:

[In] a place where there are no [other] people [that the employer could hire at a comparable wage], the employer may hire [other workers, even at exorbitant wages], to replace [the first workers, and the first workers must subsidize these wages;] or he may trick [the first workers into working for him. The Gemara below explains how he tricks them.]

Gemara:

How would he trick them? He may say to them, “[Earlier,] I fixed [your wages at] one Sela; come [back and finish the job] and [I will allow you to] collect two Selaim”

We agreed that you would work for a Selah. [However], come and I will pay you two.” [Then after they are finished he can pay them the originally agreed upon amount of one, for the employer has no intention – nor any obligation – to honor his additional commitment].

In the case where a hired laborer:

1. chooses to back out of a work agreement, and as a result
2. he causes a loss to the employer by not doing the work in the required time, and
3. there is no equivalent laborer to hire,

then the employer may falsely promise double wages to have him do the work. After the work is complete the employer can pay the laborer according to the original wage agreement.

A4. Deceiving a Man in Order That He Do Chalitzah for Widowed Sister-In-Law

יבמות דף ק"ו ע"א Yevamos 106a (Gemara)

ומעשה באשה אחת שנפלה לפני יבם שאין הגון לה, ואמרו לו: חלוץ לה על מנת שתתן לך מאתים זוז, ובא מעשה לפני רבי חייא והכשירה...

בת חמוה דרב פפא נפלה לפני יבם שאין הגון לה, אתא לקמיה דאביי...

אמר ליה: חלוץ לה ע"מ שתתן לך מאתים זוז. לבתר דחליץ לה, אמר לה: זיל הב ליה, אמר ליה: משטה אני בך עבדה ליה, מי לא תניא: הרי שהיה בורח מבית האסורין והיתה מעברא לפניו, ואמר ליה טול דינר והעבירני, אין לו אלא שכרו; אלמא אמר ליה משטה אני בך, הכא נמי משטה אני בך.

[Introductory note: The Torah provides that if a husband dies childless, his widow and surviving brother should marry (this is known as Yibum). In case the brother (known as the Yavam) or surviving wife (known as the Yavamah) does not wish to go through with the marriage, there is a process known as Chalitzah, which severs the bond between them. (Today, only Chalitzah is done.) Until he performs Chalitzah however, she may not marry another man. (See Devarim 24:5-10.)]

[The Gemara cites the following incident from a Baraisa:]

And [there was] an incident with a certain woman who fell [for Yibum consideration] before a Yavam who was inappropriate for her. And they

said to the [Yavam]: “Perform Chalitzah with her on the condition that she will give you two hundred zuz.” [The Yavam then performed Chalitzah, but the Yevamah refused to give him the money.] And the case came before R’ Chiya, and he ruled [the Chalitzah] valid. ...

[The Gemara cites another incident concerning a Chalitzah performed under false pretenses:]

The daughter of the father-in-law of Rav Pappa fell [for Yibum consideration] before a Yavam who was inappropriate for her. [The Yavam] came before Abaye. ...

[Rav Pappa described a strategy for releasing the Yavamah from the inappropriate brother-in-law:]

He said to [Abaye: “Tell him]: ‘Perform chalitzah with her on the condition that she will give you two hundred zuz.’” [Abaye accepted this advice, and told the Yavam to perform Yibum under that condition.] After [the Yavam] performed Chalitzah with her, [Abaye] said to [the Yevamah]: “Go give him [the money].”

[Rav Pappa] said to [Abaye]: “She acted with him [insincerely, with the intent to later say:] ‘I was joking with you,’” [and therefore she does not owe the money to the Yavam. Rav Pappa cites supporting evidence for his strategy:]

Has it not been taught in a Baraisa: There was one who was fleeing from prison, and there was a ferryman before him. And [the escapee] said to him: “Take a dinar [a considerable amount of money] and ferry me across [the river.” The ferryman] receives only his [regular] fee.

We thus [see that the escapee] can tell him: [“When I offered you a dinar,] I was joking with you.” Here too, [let the Yevamah say: “When I offered two hundred zuz,] I was joking with you.”

The case of our Gemara is where the surviving brother is unfitting to be married to the widow, yet he refuses to do Chalitzah to allow her to marry another man.

In such a case, Rav Chiyah and Abaye falsely promised a large sum of money to the surviving brother to convince him to perform Chalitzah. When he claims the money afterwards, he is told: “We were only fooling you in order that you do Chalitzah.”

A similar case is someone who escapes and is fleeing from being imprisoned wrongfully by non-Jews. When he gets to the sea, it is possible that a ferryman may take advantage of his desperation to escape and demand an exorbitant sum of money to transport him. In such a case, the escapee can say that he will pay the higher amount, but after arrival he is permitted to pay the standard fare.

A5. Deceiving Robbers and Extortionists to Protect One's Property

משנה נדרים כ"ז ע"ב, וגמ' כ"ח ע"א
Mishnah Nedarim 27b, Gemara 28a

מתני'. נודרין להרגין ולחרמין ולמוכסין, שהיא תרומה אע"פ שאינו תרומה, שהן של בית המלך אע"פ שאינן של בית המלך.

גמ'. היכי נדר? א"ר עמרם אמר רב: באומר יאסרו פירות העולם עלי אם אינן של בית המלך. כיון דאמר יאסרו, איתסרו עליה כל פירי עלמא! באומר היום. אי דאמר היום, לא מקבל מיניה מוכס! באומר בלבו היום ומוציא בשפתיו סתם, ואע"ג דסבירא לן דברים שבלב אינם דברים, לגבי אונסין שאני.

Mishnah:

One may declare a vow to murderers and to plunderers and to [self-appointed] tax collectors, [to support his claim] that it [the produce they seek to seize from him] is Terumah [and hence forbidden to a non-Kohen], even though [in truth] it is not Terumah, [or] that [the properties they seek to seize] belong to the royal house, even though they do not [in fact] belong to the royal house.

Gemara:

[The Gemara analyzes the manner in which he convinced the robber of his assertion:]

How did he vow? Rav Amram said in the name of Rav: [The Mishnah refers to] where he says, "The fruits of the world shall be forbidden to me if they [the things you seek to seize] do not belong to the royal house."

[The Gemara rejects this explanation: but] since he says, "[the fruits of the

world] shall be forbidden...,” [if what I say is not true,] all the fruits of the world [will *indeed*] become forbidden to him [*forever*. This is surely not what the Mishnah meant!]

[The Gemara answers: rather, you must say that the Mishnah refers to] where he says [in his declaration of a vow (Neder) that the fruits shall be forbidden to himself only] “today” [if what he says is untrue.]

[The Gemara asks:] If [it refers to] where he says [explicitly that the fruits shall be forbidden to him only] “today,” [then] the tax collector [or robber] will [surely] not accept [this vow] from him [as proof that his assertion is true!]

[The Gemara explains its intent: the Mishnah refers to] where he says *in his heart* [that he means to forbid the fruits only] “today,” but he expresses with his lips [an] unqualified [utterance, saying simply that “the fruits shall be forbidden to him.”] And even though we hold [in general that] words of the heart [left unspoken] are not words, [i.e. one’s unexpressed thoughts have no legal power to define or qualify his spoken words or actions,] with regard to [a situation of] coercion, it is different, [and we do indeed reckon with his unspoken qualification. Hence, unbeknown to the tax collector or robber, the vower’s Neder actually forbids the fruit to him only for one day].

To protect oneself, it is permissible to lie to an extortionist who is trying to illegitimately take one’s money or property.

In the case of the Mishnah, the lie consists of telling the thief that the property belongs to the king. The thief would be dissuaded since the consequences for being caught with the king’s property are severe. Or the thief could be told that the property is Terumah, which means that it belongs to the Temple treasury, and misappropriation thereof is a severe offense against G-d. (Presumably, the thief is unconcerned with robbing his fellow man, but *is* concerned with his standing in G-d’s eyes. Or he realizes that Terumah has little resale value, since it is only eaten by Kohanim.)

In order that the victim’s lie be believed by the thief, he can even deceive the thief by taking a vow such as: “If what I am claiming is not true (i.e. if this is *not* the king’s property), then all food produce is forbidden to me.” The thief thinks the victim means he will *never* eat produce again, but in the victim’s mind he stipulates “I will not eat produce for the rest of the day.”

B. THE JUSTIFICATION FOR COUNTER-DECEPTION

Granted, the above sources are difficult to understand in light of the Torah's command to "Distance yourself from falsehood" (Shemos 23:7). But even more troubling is the issue raised in the following source: How is the account of Yaakov who disguised himself as his brother Eisav understood, since it is a seemingly deceptive ploy to receive his father's blessings (see Bereishis ch. 27)? Is it permitted to lie in order to receive a blessing and inheritance? And is Yaakov not known to be an embodiment of the highest levels of integrity?

B1. Deceiving a fraud is considered a preservation of the truth.

ספר אמת ליעקוב להר"י קמינצקי זצ"ל בראשית כ"ז, י"ב
 Sefer Emes L'Yaakov by R' Yaakov Kaminetsky
 (on the verse: Bereishis 27:12)

ולפ"ז תגדל התמיהה על יעקב אבינו, כשנראה מה שעשה לקבל את הברכות היה רחוק מן הישרות: הכי קרא שמו יעקב ויעקבני זה פעמים, ומה גם יעקב אבינו שעליו נאמר תתן אמת ליעקב, והז"ל [מכות דף כ"ד ע"א] דרשו עליו הפסוק לא רגל על לשונו, וא"כ מדוע נקט יעקב כאן בדרך הנראית כעקומה לכאורה?

אבל באמת למדנו מכאן יסוד גדול במהות ה"אמת", דהנה דהלן [פל"ה] על הפסוק בא אחיך במרמה וגו' תרגם אונקלוס: "בחכמתא". וביאור הדבר הוא, שגם האמת צריכה שתאמר לפי חשבון, שהרי למשל אם ראובן הנרדף מתחבא אצל שמעון, וכשהרודף מחפשו אומר שמעון לרודף שראובן מתחבא אצלו ומשום שאינו רוצה לשקרת, הכי זה "אמת" יקרא? אלא ודאי שלפעמים מותר לאדם להשתמש בדרך הערמה כדי להשיג את מבוקשו, והיינו לפי הכלל של "ועם עקש תתפתל" [תהלים י"ח פכ"ז], דכשהוא בא לידי התמודדות עם רמאי מסוכן מסוגו של עשו, לפעמים אין מנוס מהשימוש בדרך הערמה והשתמטות. רמאות מעין זו, כפי הצורך והשעה, מצינו כמה וכמה פעמים אצל יעקב אבינו ואין זה כלל סתירה למושג של "תתן אמת ליעקב". לדוגמא: כל ענין פיצול המקלות שעשה יעקב כדי להציל את צאנו מידי הרמאיות של לבן: מה שאמר יעקב לעשו: עד אשר אבוא אל אדני שעירה, כלומר שהרחיק את עצמו מדרך ערמה, ואינו למדים מזה הלכה לדורות שמותר לאדם להרחיק את עצמו מן הנכרי כשחושש ממנו: מעשה יעקב ושכם, שבמרמה סובבו בני יעקב שאנשי שכם יחלישו את עצמם ויכלו להרוג אותם. כל זה נכנס בגדר העסק עם רמאי ורשע, ואינו גורע כלום ממעמדו של יעקב כסמל האמת.

[Introductory note: Yitzchak had two sons: Yaakov and Eisav. Over time, Eisav deceived his father into believing that he was a wholesome heir to his father's spiritual and physical blessings. For example, Eisav would fulfill the mitzvah of honoring one's mother and father, but when not in his father's presence he would be involved with murder and immorality. In truth, Yaakov was more fitting to be the heir to the spiritual destiny. Yitzchak's wife, Rivka, recognized this clearly, and helped Yaakov devise a scheme to acquire his father blessings.]

[The forefathers of the Jewish people: Avraham, Yitzchak and Yaakov are referred to by the Sages as “the upright ones,” for they exhibited moral virtue of superhuman proportions. For this reason the book of Bereishis, which portrays their lives, is referred to as the “Book of the Upright.”] According to this, the questions regarding Yaakov's [actions] are all the more puzzling – for it would appear that what he did to get the blessings [instead of Eisav] was far from being upright. [As Eisav exclaims after finding out he was deceived by Yaakov:] “Is it because he is called Yaakov that he has outsmarted me twice?!” [Bereishis 27:36. The name “Yaakov” shares the same root letters, and thus a related meaning, to the word “Ya'akveini,” which mean to “outsmart” in Hebrew.]

This is the same Yaakov, our forefather, about whom it is said, “Grant truth to Yaakov [... as You swore to our forefathers in ancient times,” Micah 7:20. The commentaries on this verse say that G-d's attribute of truth is symbolized by Yaakov].

Further, our Sages (in Gemara Makkos 24a) say that the following verse is referring to him, “He has no slander on his tongue” [Tehillim 15:3]. If this is so [that Yaakov is the epitome of truth] then why is Yaakov utilizing what would appear to be deceptive measures?

However, we learn [from Yaakov's action] an important fundamental in the nature of “truth.” In Bereishis 27:35, [Yitzchak says to Eisav] “Your brother came with trickery and took your blessing.” Onkelos translates “he came with trickery” as: “he came with *wisdom*.” The meaning behind Onkelos' choice of translation is that even the truth must be expressed according to a wise accounting of the situation. As an example, [consider the following case:] Reuven is being chased by an attacker and hides at Shimon's home. When the attacker comes asking for Reuven, Shimon says that Reuven is hiding in his house, because he doesn't want to lie. Is this called truth?

Rather, on occasion it is certainly permitted for a person to use deceptive means to achieve his ends, according to the principle [“with the pure You

act purely and] with the crooked You act crookedly” (Tehillim 18:27). For example, if one is involved in daily interactions with a dangerous fraud — someone of Eisav’s type — sometimes there may be no alternative other than using deceptive and evasive means.

Thus, deception such as this, used only according to the need of the hour, is employed by Yaakov a number of times, and is by no means a contradiction to the notion of “Grant truth to Yaakov” [Micah 7:20]. For example:

[1.] The entire incident of Yaakov using rods peeled [of their bark] was a means to save his sheep from the trickery of [his father-in-law] Lavan. [Lavan had stipulated that of the flocks of sheep that Yaakov was tending, he could only keep the ones born with abnormal and rare coloring. To outwit his uncle and retain what was rightfully his under the original terms of their arrangement, Yaakov resorted to several devices. He placed colored rods that had been peeled of their bark in front of the flocks at the time they conceived, so that they would bear lambs having the same markings as the rods they were facing. See Bereishis 30:27-43.]

[2.] That which Yaakov says to Eisav [after Eisav asks that they travel together], “Until I catch up to my lord at Seir” [Bereishis 33:14] in which he created a distance between themselves through use of a ruse [since he had no intention of traveling to Seir].

[From this incident] we also learn a Halacha for all generations: that it is permissible for a person to distance himself from a stranger [or a gentile] if he suspects his trustworthiness.

[3.] The incident of Yaakov and Shechem, where his sons deceptively arranged that the people of Shechem should weaken themselves [through performing a circumcision], in order that they would be able to kill them [in their weakened state and rescue their sister Dinah who had been abducted by them. See Bereishis 34:13-26].

All this falls under the category of interaction with a deceptive or evil person – and [engaging in deceit in such a situation] does not detract from Yaakov’s standing as the epitome of Emes — truth.

It is fitting and appropriate to use deception to overcome and protect oneself from a fraud with malicious intent.

How do we understand the justification for such counter-deception?

One approach is that counter-deception is in fact the truth, because the fraud is trying to take what in truth is not his. One is preserving the truthful state of affairs by *not* giving to him what he is trying to extort. In other words, no one *owes* the extortionist money — his claim is a lie! And therefore to outsmart him is to stand up for the truth! (This refers to a case where no other means are available, as shall be seen).

In the case above, Eisav was an imposter, posing as the fitting heir to his father's spiritual and moral heritage. Rashi understands the Torah's description of him as a man of "trapping," to be referring to his practice of ensnaring and deceiving his father with his words (Bereishis 25:27, Rashi s.v. "Yode'a Tza'yid"). Yaakov's actions were therefore a fulfillment of the truth since Eisav was trying to extort what was never his. And further, Yitzchak himself wanted to give the blessing to the fitting heir, not to the imposter.

C. CONDITIONS FOR DECEIVING A LIAR, THIEF OR EXTORTIONIST

In this part of the chapter we will present limitations and conditions on the permit to alter the truth for the sake of peace, a Mitzvah or the like (as was seen in Chapter 1) or for the sake of protecting oneself from a liar, thief or extortionist (as was seen in this chapter). By way of introduction:

In Chapter 1 (Source A2, case 8) it was shown that if a debtor falsely denies the money that he is owing to three claimants, it is prohibited for one claimant to claim the total amount, and for the other two claimants to pretend to be witnesses supporting the claim.

Why did the Gemara prohibit this case under the Mitzvah to "Distance yourself from falsehood" (Shemos 23:7), if in fact it is *appropriate* to use deception to protect oneself from a fraud (as was seen in this chapter)?

Why are the three claimants not permitted to deceive the liar in order to recover what's theirs? How is this different from the cases in the Gemara's above (Sources 1-5) where such deception *is* permitted?

C1. Deceiving a Fraud is Prohibited in Beis Din

שו"ת הרשב"א חלק ג' סימן פ"א
She'elos u'Teshuvos Rashba 3:81

וגדולה מזו אמרו בפרק שבועת העדות, שאפילו באומר אמת, אלא שהדבור אינו על אותו דרך שאמרו, אסרו, וכדאמרין התם: מנין לשלשה שהפקידו אצל אחד, וכפר בהן, מנין שלא יהא אחד תובע, ושנים מעידים? ת"ל מדבר שקר תרחק; וזה ודאי אמת, כמו שמעידין אלו שהממון הופקד בידו בפניהם, ואפילו הכי, כיון שהן אומרים בתורת עדות, אסור.

The Sages stated a very significant ruling [in the Gemara in Shevuos 31a], in Chapter Shevuos HaEidos — even if one is telling [what he perceives to be] the “truth,” but he relates it in a way that it did not actually occur, it is prohibited [by the Sages, since he is giving testimony in Beis Din. For example] it is stated there in the Gemara [ibid.]:

From where [do we know] that if three people deposited a Maneh with another person [and now the guardian] denies [receiving it and there are no witnesses], that they may not act as though one of them is the claimant and the other two are the witnesses [so as to get the Maneh and split it among themselves?] The Torah states: “Distance yourself from falsehood” [Shemos 23:7].

[The events that the would-be-witnesses would testify to] would certainly be true, for they did indeed witness the deposit of the money [to the guardian]. However, since they are relating the events as testimony, it is prohibited [since they did not witness it as witnesses, but rather as owners and interested parties in the money].

To protect oneself from a fraud, one is permitted to act deceptively outside of Beis Din. Inside Beis Din, however, such a tactic is prohibited.

It is therefore prohibited to act deceptively in a Beis Din *even* when one's opposing litigant is already a liar. One may therefore not change one's claim or reporting of the facts so as to receive the ruling one desires, even though such a ruling would ultimately be true in one's eyes. This is the answer why in the case above, two of the three claimants may not pretend

to be witnesses in Beis Din to extract what they believe to be rightfully theirs. Even though their testimony may be true, to qualify as Halachic witness, they have to be disinterested parties.

A remaining question is the case of the student asked by his Rabbi to accompany him and the other witness to Beis Din to give the impression that he too is a witness, and in so doing scare the opposing litigant into admission (case 7, *ibid.*). Is this not taking place *before* the actual Beis Din proceedings? If so it should be permitted, since the deception is occurring *outside* of Beis Din!

Possibly, one could argue that it is not the Rabbi that is prohibited to have his student pose a witness (since the Rabbi knows he is in the right), but rather the *student* is prohibited. Although the student is allowed to *hear* his Rabbis claim (since this is a case of Lashon Harah l'Toeles, derogatory speech for the sake of a positive benefit), the student may not take any *action* against the alleged fraud (like accompany his Rabbi to Beis Din to start a chain of events that will lead to a conviction) until he sees evidence with his own eyes.

Still, if the defendant is in the right, then he need not fear the appearance of the student accompanying his Rabbi to court, since it is a Torah prohibition for a person to give false testimony (see Shemos 20:13). So why then should it be prohibited for the student to accompany his Rabbi to Beis Din? If the defendant is in the right he has nothing to fear and there's no falsehood that could result!

C2. Testing a suspected fraud is prohibited if an innocent subject will doubt himself and wrongfully admit.

רמ"א חושן משפט סימן כ"ח סעיף א' וסמ"ע ס"ק י"ד
Remah, Choshen Mishpat 28:1 and S'mah 14

רמ"א.

ואסור לאדם להעיד בדבר שאינו יודע, אף על פי שאמר לו אדם שיודע בו שאינו משקר. ואפילו אמר לו: בא ועמוד עם עד אחד שיש לי ולא תעיד, רק שיפחד בעל חובי ויסבור שיש לי שני עדים ויודה לי, לא ישמע לו (טור).

סמ"ע י"ד.

ולא תעיד רק שיפחד בו'. וזה אסור משום מדבר שקר תרחק (גמ') ור"ל שמא ע"י פחד זה ישווה עמו הנתבע שלא כדין שלא היה חייב לו

Remah:

It is forbidden to testify about something which one does not have [first hand] knowledge, even if he was told about it from one whom he knows does not lie.

Even if [that reliable source] were to tell him, "Come and stand next to a single witness that I have [regarding my claim in Beis Din]. You will not have to testify, [since your mere presence outside of Beis Din] will alarm my opponent. He will think I have two witnesses and will admit [to borrowing and pay back]." – he may not comply.

S'mah:

You will not have to testify, [since your mere presence outside of Beis Din] will alarm [my opponent] etc – This is forbidden due to the verse "Distance yourself from falsehood." That is to say, perhaps, due to this fear, the defendant will [be bluffed into] wrongfully settling with the claimant [by paying him money] that he does not owe him.

It is clear from the S'mah that it would have been permitted for the student to engage in his Rabbi's test of the suspected fraud by coming to stand outside of Beis Din. However, there is a concern that although the defendant may be innocent, when he sees the opposing litigant with his two witnesses, he will doubt himself and wrongfully admit to the debt. He will argue to himself that since there are two witnesses, he must have simply forgotten that he owes the money.

From the sources above, we see that it is permitted to protect oneself from a fraud through the use of deception. Further, it is permitted to test a suspected fraud through deceptive measures – assuming that the test will not produce false results. (In other words, in a case where there is no concern that the defendant will needlessly admit, the student may *indeed* accompany his Rabbi to stand *outside* of Beis Din to help see if the defendant will admit to the loan.) In both cases, such deception is not falsehood, but rather a preservation of the truth.

*C3. Even where an adult is permitted to alter the truth,
a child may not do so.*

יבמות ס"ג ע"א, ורש"י
Yevamos 63a (Gemara and Rashi)

רב הוה קא מצערא ליה דביתהו, כי אמר לה עבידי לי טלופחי עבדא ליה חימצי, חימצי עבדא ליה טלופחי. כי גדל חייא בריה, אפיך לה. אמר ליה: איעליא לך אמך! אמר ליה: אנא הוא דקא אפיכא לה. אמר ליה, היינו דקא אמרי אינשי: דנפיק מינד טעמא מלפך, את לא תעביד הכי, שנאמר: למדו לשונם דבר שקר העוה וגו'.

חימצי. מין קטנית.

אפיך לה. היה אומר האב לבנו אמור לאמך לעשות עדשים והוא אומר לה עשי חימצי והיא עושה עדשים.

טעמא מלפך. פעמים שהבן מחכים את אביו אני היה לי לעשות כן.
אבל אתה. דבר שקר הוא וכתיב למדו לשונם דבר שקר.

Rav's wife would aggravate him. When he would tell her, "Prepare me lentils," she would [instead] prepare *chimtzei* [a type of legume, possibly peas]. [If he said, "Prepare me] *chimtzei*," she would [instead] prepare lentils.

When his son, Chiya, grew up [and would relay his father's requests to his mother,] he would reverse [them] to her, [so that his father would end up receiving exactly what he had requested. Upon receiving the desired dish, and not realizing Chiya's subterfuge, Rav] said to him, "Your mother has improved [her ways]!"

[Chiya] replied to him, "It was actually I who reversed [your request] to her."

[Rav] replied to him, "This bears out the popular saying "[The child] who comes from you will educate you." [I, too, should have thought of this trick!] [However,] you should not do this, for it says: 'they train their tongue to speak falsehood, striving ... [to be iniquitous.' Yirmiyahu 9:4]."

Rashi:

He would reverse [them] to her— When the father would tell the son, "Tell your mother to prepare lentils," he [the son] would say to her: "Prepare *chimtzei*," and she would prepare lentils.

However [for] you – this is falsehood [and not a permissible altering of the truth] and [falls in the category] of that which it is written: “They train their tongues to speak falsehood.”

The son’s words were not falsehood, since one may alter the truth for the sake of Shalom Bayis (marital harmony). Nevertheless, the Rabbis prohibited children from altering the truth in order to avoid them developing a negative habit of speaking falsehood.

From the Gemara’s wording – “*you* [the child] may not do so” – it is possible that the prohibition against altering the truth (even in a case of Shalom Bayis) applies only to a child. An adult however, (Rav) would be allowed to do so for the sake of Shalom Bayis since it is assumed that an adult will understand the distinctions about when it is permissible to alter the truth and when not. If however, an adult may develop a habit of lying, then he would have the status of a child, and would be prohibited from the altering the truth. This special Rabbinic prohibition is based on the verse “They [the adults] train their [children’s] tongues to speak falsehood” (Yirmiyahu 9:4).

C4. Even where altering the truth is permitted for an adult, one may not do so on a regular basis.

ים של שלמה מסכת יבמות פרק ו' סימן מ"ו

Yam Shel Shlomo, Yevamos 6:46

א"ר אילעא משום ר' יהודא בר שמעון (ס"ה ע"ב) מותר לשנות בדברי שלום, שנא' (בראשית נ', י"ז) כה תאמרו ליוסף וגו', ר' נתן אמר, מצוה, שנאמר (ש"א ט"ז, ב') ויאמר שמואל איך אלך וגו', ויאמר עגלת בקר תקח בידך וגו', ונראה, דוקא דבר שהוא באקראי, אבל שליחות שהוא בין אביו לאמו לא ישנה, אפי' במשנה משום שלום, כמו שמצינו בהאי פירקא (ס"ג ע"א) שהקפיד רב על חייא בריה, וא"ל, את לא תעבוד עובדא כו', והיינו דא"ל האי קרא (ירמיה ט, ד') למדו לשונם דבר שקר וגו', כלומר, שהקפיד שלא ילמוד לשונו בכך.

[The Yam Shel Shlomo quotes the following Gemara in Yevamos 65b:]

R' Ilai said in the name of R' Elezar the son of R' Shimon: "It is permitted to alter [one's words] for the sake of peace, as the verse says (Bereishis 50:16-17), ['Your father Yaakov gave orders to us, your brothers, before his death, saying:] Thus shall you say to Yosef: [please forgive the sin of your brothers against you.' Yaakov had never made such a request of Yosef, yet the brothers fabricated it in order to create peace between themselves and Yosef]."

R' Nosson said: "It is a Mitzvah [to lie for the sake of peace], for it is stated (Shmuel I 16:2): And Shmuel said, 'How can I go [and anoint David as the new king, for Shaul will hear and he will kill me?]' To which HaShem] said, 'Take along a young cow, and say: I have come to bring an offering to HaShem' [thus avoiding any suspicion of going to anoint David as king]."

Now it would seem that this only applies in non-recurring situations. But [in the case of a son acting as a] messenger between his mother and father [on a constant basis], he may not lie, even if his lie is meant for the sake of peace. [Indeed this is the law], as we find in this chapter (Yevamos 63a) that Rav was unhappy with his son Rav Chiyah [for his deceit – even though it was for the purpose of peace], and said to him "Nevertheless, you may not [continue to] do so." And this is why he brings the verse, 'They have taught their tongue to speak falsehoods.' He was adamant about not training one's tongue in such [deceitful words – irrespective of the positive result the deception produced].

Even in situations where the Torah permits altering the truth for the pursuit of peace or a Mitzvah or the like, the Maharshal understood from the above Gemara that it is forbidden for adults (and children) to do so regularly.

It was seen (in Chapter 1, Part D) that if the message understood by the listener is false and he is deceived, then this is considered falsehood even if the words of the speaker are accurate. From Rashi, in his commentary on Chumash (in the next source), it would appear otherwise: that the accuracy of the words is all that is required, even if the message is deceptive.

C5. Yaakov's words could be understood as truthful.

רש"י בראשית פרק כ"ז פסוק י"ט

Rashi, Bereishis 27:19

אנכי עשו בכורך. אנכי המביא לך, ועשו הוא בכורך:

[Bereishis 27:19. Yaakov appears to his father dressed in Eisav's clothing and says] "It is I, Eisav your firstborn."

[Rashi comments on the verse: Yaakov means to say] "It is I [Yaakov,] who is bringing to you [this food], and Eisav is your firstborn."

According to Rashi, it would seem that Yaakov's words were truthful since there *is* a way – albeit with difficulty – to read and interpret his words as if they were a completely true statement.

However, why does Rashi present us with a hard-pressed reading of Yaakov's words if he was anyways permitted to deceive an impostor like Eisav?

C6. Even where it is permitted to alter the truth, one should minimize the falsehood.

ספר אורחות צדיקים סוף שער כ"ב

Orchos Tzadikim, end of Sha'ar 22

ובכל אלו שהתירו חכמים לשנות, אם יכול לעשות שלא ישקר, הוא טוב יותר ממה שישקר, כגון אם שואלין לו: יודע אתה מסכתא פלונית? ישיב: וכי אתה סבור שאני יודע? ואם יוכל לסלק השואל בענין שלא ישקר, הוא טוב מאד.

In all these situations where the Sages permitted one to alter [the truth], if one could achieve the same ends without lying, that would be better. For example, if they asked him "Do you know Mesechta so-and-so?" [and out of humility he does not want to admit that he indeed knows it,] he should respond, "Do you really think that I know it?"

And if one can avoid answering the questioner in a way that he will not have to lie [for example, by changing the topic], then this is very good.

Even where it is permissible to alter the truth, it is preferable to say it in a way where the words give an ambiguous message, so as to avoid speaking outright falsehood. The ideal response would be to not respond to the question at all – for example, by changing the topic and distracting the questioner.

Therefore, Rashi's reading of Yaakov's words (that they could be read as truthful, see previous source) is not the source of the permissibility of what Yaakov did, but rather a stringency on his part. That is, even though Yaakov was permitted to use deception to protect himself from a fraud, nevertheless he was careful to use words that were not outright falsehood.

D. ALTERING TORAH LAW

D1. The Roman authorities were taught: A Jew whose ox gores an idolater's ox is exempt from paying damages.

משנה בבא קמא דף ל"ז ע"ב, וגמ' ל"ח ע"א
Bava Kama, Mishnah 37b, Gemara 38a

מתני'. שור של ישראל שנגח לשור של כנעני פטור, ושל כנעני שנגח לשור של ישראל, בין תם בין מועד, משלם נזק שלם

גמ'. ת"ר: וכבר שלחה מלכות רומי שני סרדיוטות אצל חכמי ישראל למדונו תורתכם, קראו ושנו ושלשו. בשעת פטירתן, אמרו להם: דקדקנו בכל תורתכם ואמת הוא, חוץ מדבר זה שאתם אומרים: שור של ישראל שנגח שור של כנעני פטור, של כנעני שנגח שור של ישראל, בין תם בין מועד משלם נזק שלם. שלם. ממי"נ אי רעהו דוקא אפילו דכנעני כי נגח דישאל ליפטר ואי רעהו לאו דוקא אפילו דישאל כי נגח דכנעני לחייב ודבר זה אין אנו מודיעים אותו למלכות.

חז"ל מדבר זה. והם לא גילו להם טעמו של דבר שיהא ממונו של כנעני בחזקת הפקר מפני הסכנה:

Mishnah:

[If] the ox of a Jew gored the ox of a Canaanite, [the Jew] is exempt [from paying for damages]. But [if the ox] of a Canaanite gored the ox of a Jew, whether [the ox that gored was] a Tam [lit. ordinary, a bull before it gores three times pays only half the value of damages] or Muad [lit. warned one, a bull that gores three times and whose owner was duly warned after each incident to take precautions], [the Canaanite] pays full damages.

Gemara:

[Background: regarding one's ox which gores and damages another's ox, the Torah states: "If one man's ox strikes *his fellow's* ox which dies, they shall sell the living ox and divide it's money, and the carcass, too, they shall divide" (Shemos 21:35).]

The Rabbi's taught in Baraisa: The Roman Government once sent two officers to the sages of Israel, [saying:] "Teach us your Torah." They read it once, reviewed [it] and [then read it] a third time.

When they were leaving [the officers] said to the Sages, "We have carefully examined your entire Torah, and it is [all] true, except for that which you say: [If] the ox of a Jew gored the ox of a Canaanite, [the Jew] is exempt; if [the ox] of a Canaanite gored the ox of a Jew, whether [the ox that gored] was a Tam or a Muad, [the Canaanite] pays full damages.' [For] however you consider [the matter, it is difficult.] If 'his fellow' [in the verse above] is [meant] literally, [then] even when [the ox] of a Canaanite gores [the ox] of a Jew, [the Canaanite] should be exempt. And if 'his fellow' is not [meant] literally, [then] even when [the ox] of a Jew gores [the ox] of a Canaanite, [the Jew] should be liable. [This law makes no sense!]" However, we will not reveal this matter to the authorities [lest it jeopardize your welfare].

Rashi:

Except for that which you say – They [the Sages] did not reveal to them [the Romans] the reasoning – namely that the money of a Canaanite is considered ownerless – due to the danger [in saying such a thing]

According to Torah law, if an ox owned by a Jew gores an ox owned by an idolater, the Jew is exempt from paying damages to the idolater. Despite the danger involved in revealing such a law to the Roman authorities without a satisfying explanation, our Sages taught it anyways.

D2. Lying about the details of a Torah law is prohibited even when threatened with one's life.

ים של שלמה מסכת בבא קמא פרק ד' סימן ט'
Yam Shel Shlomo, Bava Kama 4:9

גם שמעינן מהאי ברייתא דאסור לשנות דברי תורה, אף כי הסכנה. וחייב למסור עצמו עליה, דלפי חד שינוי דתו' (ד"ה קראו) שמלכות הרשעה גזרה עליהם. ולמה לא ייראו חכמים שתעליל מלכות הרשעה עליהם. הלא לא תמצא דבר קשה כזה לומר בפני האומות שאנחנו פטורין מהיזיקן, והם חייבים. וכי לא היה ראוי לחוש ח"ו לכמה שמדות וחורבות דליפוק מיניה. בפרט מלכות הרשעה, שכל מחשבתם רק להתגולל ולהתנפל על שונאינו. וא"כ היה להם לשנות, או שניהם חייבים, או שניהם פטורין. אלא ש"מ שמחויבים אנו למסור על קידוש השם. ואם ח"ו ישנה הדין הוה ככופר בתורת משה. ומסתמא איירי כגון שהשרים שאלו בפרטים על כל דין ודין, שור של ישראל שנגח לשל נכרי, ושל נכרי שנגח לשל ישראל. ועל כן השיבו האמת על קדושת השם. כי לא היה יכולת בידם לשמט את עצמם מדין זה.

We also learn from this Baraisa [in Bava Kamma 38a, cited above in Source D1] that it is prohibited to alter words of Torah [i.e. lie about the details of Halacha] even in a case of danger.

Further, one is required to give one's life [rather than transgress this prohibition], according to the one answer given in Tosafos [s.v. "karu," Bava Kamma 38a, in which it is implied that] the evil [Roman] empire forced them to do so [on pain of death].

Why then were the Sages not afraid that the evil [Roman] empire would use this as a pretext against them? For is there anything worse than telling nations that we are exempt for damaging them, but they are liable [for damaging us]?! Should they not have been concerned, G-d forbid, for the myriad of enactments and pogroms that would ensue from this?

[This question is all the more strong] especially considering the evil [Roman] empire who occupied all their thoughts with finding pretexts with which to attack our enemies. [Here the phrase “our enemies” is a euphemism referring to the Jew people itself.] Therefore, they [the Sages] should have altered [the words of the Halacha, by either saying] that both a Jew and non-Jew are obligated if they cause damage to each other, or that both are exempt if they cause damage to each other.

Rather, [since the Sages did not alter the Halacha,] we learn from here that we are obligated to give our lives in sanctifying [G-d’s] Name. And if one were to, G-d forbid, change the Halacha, it would be as if he were denying [the validity of] the Torah of Moshe.

Ostensibly, the situation [in the Beraisa of Bava Kamma 38a] was one where the [Roman] officers were asking for the details of each and every Halacha. [For example, they asked: Does a Jew pay for damages if a] Jew’s ox gores a non-Jew’s ox? [Does a non-Jew pay for damages if] a non-Jew’s ox gores a Jew’s ox? Therefore the Sages responded with the truth, as a sanctification of [G-d’s] Name, for they had no way of avoiding [the pointed questions of the Romans].

The Maharshal derives from the above Gemara that it is prohibited to lie regarding a detail of Halacha, even if there is danger involved in revealing the Halacha truthfully. According to the Maharshal, teaching Torah not in accord with the Halacha falls into the category of those prohibitions regarding which one should rather give one’s life than commit.

For the purposes of practical Halacha, others are more lenient regarding lying about Halacha, and do not require one to give up one’s life, but nevertheless regard it to be an extremely serious offense (Sefer Akov L’Mishor, p. 33, citing R’ Moshe Feinstein).

Nevertheless, the next source shows that the Sages *did permit* one to say an inaccuracy in Halacha, on condition that one’s intention is to teach the correct Halacha afterwards.

D3. To sharpen his students, a teacher may temporarily state an incorrect Halacha.

ברכות דף ל"ג ע"ב
Berachos 33b (Gemara)

ההוא דנחית קמיה דרבה ואמר: אתה חסת על קן צפור אתה חוס ורחם עלינו. אמר רבה: כמה ידע האי צורבא מרבנן לרצויי למריה! אמר ליה אביי: והא משתקין אותו תנו! ורבה נמי לחדודי לאביי הוא דבעי.

A certain man went down [in front of the ark to serve as the prayer leader] before Rabbah, and he said [in his prayers]: “You, [G-d], have shown mercy on the bird’s nest; [so] may You have compassion and mercy on us.” [Upon which] Rabbah said, “How well this sharp Torah scholar knows how to win favor with G-d!”

Abaye [however] said [to Rabbah], “But we learned in the Mishnah [that if one says such a prayer] we silence him. [Why then are you praising him?]” And Rabbah too, [who certainly was aware of that Mishnah, only] wished to sharpen Abaye [and see if Abaye would challenge him by citing the Mishnah].

One who wishes to add personalized prayers to G-d in the standard texts should be careful that they not contain any heretical concepts. If he does so publicly, the Halacha requires that we silence him.

When the Shliach Tzibur (lit. “agent of the community,” or cantor) made a prohibited addition to the prayers, Rabbah should have silenced him. Instead, as a means to test and sharpen his colleague, Rabbah praised the Shliach Tzibur. By such praise, he was implicitly teaching an incorrect Halacha. This is permitted in order to teach the correct Halacha.

D4. To give weight to a Halacha, one can attribute it to a more credible source.

פסחים דף קי"ב ע"א
Pesachim 112a (Gemara)

אם בקשת ליחנק היתלה באילן גדול.

“If you want to get yourself choked, hang yourself from a tall tree” [i.e. if you wish to have your decisions accepted by others, say them in the name of a great person, even though he never said them – Rashi].

According to the Gemara, in order that a Halacha be accepted and practiced, it is permissible to attribute the Halacha to a Rabbi of greater stature and credibility than the one who originally made the statement.

D5. Conditions for attributing a Halacha to a more credible source.

מחצה"ש או"ח סי' קנ"ו ס"ק ב' ד"ה אם שמע
Machtzis HaShekel on Magen Avraham, Orach Chaim 156:2

אם בשק' להחנק יתלה באילן גדול עכ"ל ואפשר שכוונתו כיון דהטעם שמא יפקקו בדבר ויהי גנאי לרבו א"כ אם יודע שהדבר הוא דבר ברור ואין בו לפקפק ודאי מי שיוודע ברבו שאינו מקפיד בזה אם כיוונתו לש"ש כ"ה דלקבלן מיני' מותר וכה"ג מיירי בפ' ע"פ:

[The Machtzis HaShekel quotes the opinion of the Lechem Chamudos that one is permitted to teach a Halacha in the name of one's Rabbi, even if he never said it. As supporting evidence he cites the Gemara in Pesachim 112a:] “If you want to get yourself strangulated, hang yourself from a big tree.”

It seems that his intention [behind this permit] is that the only reason [to prohibit one from teaching Halacha's in the name of one's Rabbi] is that

perhaps people will doubt the validity Halacha, and cause a disgrace to one's Rabbi. Therefore if:

- [1.] one knows this is a clear and undisputed Halacha, and
- [2.] one knows that one's Rabbi would not object to this, and
- [3.] one's intention is for the sake of fulfilling G-d's will and having this Halacha become accepted,

then it is permissible [to teach a Halacha in the name of one's Rabbi, even if one's Rabbi never said it]. This is the case referred to in the statement in Chapter 'Arvei Pesachim' [in Gemara Pesachim 112a, as cited in Source D4].

The reason for the prohibition against attributing a Halacha to a Rabbi who never said it, is a concern that the Halacha is wrong, and will cause disgrace to the Rabbi's reputation. If this concern can be *avoided*, then it would be permissible to teach a Halacha in the name of one's Rabbi, even if he never said it.

Therefore, in order to give weight to a Halacha by teaching it in the name of a respected Rabbi, when in truth he never said it:

1. It must be a clear and accepted Halacha.
2. One knows that the Rabbi would give permission for such statement to be made in his name.
3. And one's intention must be upright and for the sake of fulfilling G-d's will.

E. SUMMARY

A. Deceiving a Liar, Thief or Extortionist.

The Gemara records a number of cases where outright deception is permitted to protect oneself from a liar, thief or extortionist:

1. Deceiving a non-Jewish thief who steals from the Temple property by posing as a Jew (Pesachim, Source A1).
2. Deceiving a thief and his accomplice to recover one's property (Yoma, Source A2).
3. Deceiving a laborer who chooses to renege on a work agreement (Bava Metzia, Source A3).
4. Deceiving a man in order that he do Chalitzah for his widowed sister-in-law so that she can re-marry another man (Yevamos, Source A4).
5. Deceiving robbers and extortionists to protect one's property (Nedarim, Source A5).

B. The Justification for Counter-Deception.

It is fitting and appropriate to use deception to overcome and protect oneself from a fraud with malicious intent. Such deception is in fact the truth, because the fraud is trying to take what is not his. By not giving to him what he is trying to extort one is preserving the truthful state of affairs. In other words, no one *owes* the extortionist money — his claim is a lie! And therefore to outsmart him is to stand up for the truth! (based on Emes L'Yaakov, Source B1).

Such reasoning might be dangerous, since everyone thinks *they are* right and their opponent is wrong. Therefore, before deceiving a suspected fraud, one should verify with an uninterested party who is an expert in Torah law whether one is indeed right.

C. Conditions for Deceiving a Liar, Thief or Extortionist.

Even where it is permissible to deceive a fraud or alter the truth (for example, for the sake of peace or a Mitzvah as seen in Chapter 1), there are a number of conditions and limitations on the leniency:

1. In Beis Din it is prohibited to deceive a fraud even if one believes one is right (She'elos u'Teshuvos Rashba, Source C1).

2. If an innocent subject will doubt himself and needlessly admit to wrongdoing, then testing a suspected fraud is prohibited (S'mah, Source C2).
3. It is prohibited for a child to alter the truth, or for an adult to teach him to do so (Yevamos, Source C3).
4. One may not alter the truth or deceive a fraud on a regular basis (Yam Shel Shlomo, Source C4).
5. It is preferable to say the words in a way that their meaning is ambiguous to avoid speaking outright falsehood. Ideally, one should avoid altering the truth all together, by changing the topic or distracting the other person (Orchos Tzadikim , Source C6).
6. If someone else will be negatively affected by altering the truth, then it is prohibited to do so (Sha'arei Teshuvah, Chapter 1, Source C3).

D. Altering Torah law

It is prohibited to lie or altar the details of Torah law. Teaching Torah not in accordance with the Halacha falls into the category of those prohibitions regarding which one should rather give one's life than commit, according to the Maharshal (Source D2). This explains why our Sages taught the Halacha accurately to the Roman authorities even though there may have been a danger to do so (Bava Metzia, Source D1).

For the purposes of practical Halacha, others are more lenient regarding lying about Halacha, and do not require one to give up one's life, but nevertheless regard it to be an extremely serious offence (Sefer Akov L'Mishor, p. 33, citing R' Moshe Feinstein).

However, if a teacher wants to sharpen his students and have them come to the correct answer, he may temporarily lie about a Halacha (Berachos, Source D3).

Further, to give weight to a Halacha, one can attribute it to a more credible source (Pesachim, Source D4), as long as:

1. It is an accepted and undisputed Halacha.
2. One knows that the Rabbi would give permission for such a statement in his name.
3. And one's intention is upright and for the sake of fulfilling G-d's will (Machtzis HaShekel, Source D5).

F. PRACTICAL QUESTIONS AND SUGGESTED ANSWERS

Note to the reader: The aim of this work is to give the reader an introduction to the Torah guidelines to interpersonal relationships. As always, to gain a practical ruling (Psak) for a given case, an Orthodox Rabbi or Posek should be consulted.

QUESTION 1: The taxi driver wants to charge you another \$5 for your coat. Do you have to pay, or can you tell him: “I just don’t have the money” (when in fact you do)?

Assuming that the money is truly not owed to him, you can tell him that you do not have the money to pay him.

QUESTION 2: You’re selling your house. A business associate wants to manipulate you into selling your house to him for a lower price and threatens to spread slander about you amongst your business clients. Can you tell him that the house is no longer available because you already signed with another buyer (when in fact you didn’t)?

Since your business associate is trying to extort a lower price from you, and threatens to cause damage to your reputation (which is prohibited under the laws of proper speech, Sh’miras HaLashon) if you do not comply, you can tell him that you already signed with another buyer.

QUESTION 3: A thief wants to know where your money is hidden, or where you’re hiding his intended victim — is it called “honesty” to tell him the truth?

It is *not* an act of honesty to answer the thief’s (or murderer’s) questions truthfully, and thereby aid him in acquiring what in truth was never his (Sefer Emes L’Yaakov, Source B1).

QUESTION 4: Is it permissible for a Torah teacher to come to class each day and tell the students a fictional story about his friend the policeman, and the next day about his friend the CIA agent, then his friend the army officer, if it will make the students study with greater enthusiasm since they think they have such an exciting teacher?

Inconsequential falsehood is permitted for the fulfillment of a Mitzvah (in this case teaching and learning Torah), if there is no other means available.

However there is an extra requirement to be truthful around children, so that they learn that falsehood is unacceptable (Yevamos, Rashi, Source C3). Therefore, this altering of the truth is permissible only if:

1. The children do not find out you were altering the truth, or
2. If they do find out, they're mature enough to understand why it was permissible in this case, and do not conclude for your actions that lying is permissible.

The Maharshal (Source C4) however, prohibits altering the truth on a regular basis (even for an adult), since it is habit forming and will cause one to become lax about being truthful in general.

QUESTION 5: You're at a dinner event and want to know the ingredients of a food, to help determine if it's kosher. Can you tell the manager you need to know for someone who has an allergy, and thus they will take the question more seriously?

Permitted, since this is inconsequential falsehood for the sake of a D'var Mitzvah, and there may be no other way of determining the truth.

QUESTION 6: You're a Mashgiach (kashrus supervisor) in charge of cleaning a factory to produce foods that are kosher for Pesach (the holiday when bread and Chometz products are forbidden). To avoid entering a complicated discussion about the laws of Chometz (briefly defined as: edible foods made with water and one of the five grains – spelt, rye, barely, wheat and oat – that have had time to leaven), can you tell the factory owner that “Jewish law prohibits us from eating

anything with flour in it on Pesach” (which is obviously not true, since Matzah itself contains wheat flour)?

The Maharshal says one should rather give one’s life than lie about details of Torah law. However, R’ Moshe Feinstein (cited in Sefer Akov L’Mishor, p. 33) rules that we do not follow the Maharshal. Still, it would be best to use another wording, to accurately reflect Torah law. For example, one could say: “Jewish law is quite complicated regarding permissible foods on Pesach. To simplify matters, this factory needs to be cleaned of anything containing flour.”

QUESTION 7: Your landlord wants to raise the rent on you again. You think it’s an exorbitant amount. Can you tell him that “no one in this neighborhood pays so much” (when know that’s not true)?

This is not extortion. Even if you think you deserve to pay a lower rent, and that the landlord is claiming money that is not his, it is his prerogative to charge whatever price the market will pay. Therefore, it is not permissible to alter the truth.

Therefore, if when you tell him “no one else pays so much” it will be understood by your landlord as a bargaining phrase that is non-literal, then this is permissible. If however, he will take it literally and lower his price in response to your false claim, then you have not fulfilled the Mitzvah to “Distance yourself from falsehood” (Shemos 23:7).

QUESTION 8: You paid at the store with a check. The store owner calls you up and says that you forgot to sign it. Is it permissible to tell him to sign it for you?

Another person can sign your checks if you give them permission. This is because the banks are not particular about this (R’ Berkovits).

However, anytime you have to verify the truth in an official capacity, like a notary who has to sign that a document was signed in front of him, it’s like being in a Beis Din and any form of falsehood is prohibited (R’ Eliashiv). Even if no one would be harmed by such a lie, it is considered an injustice (“avel,” or in Hebrew: אַוֵּל, as described

in the next paragraph) and is prohibited, since one is breaking the rules of the social contract that exists in that society.

The concept of an “avel” is derived from the cases in Beis Din (see Chapter 1, Source A2). Violating the rules of honesty and fair treatment in Beis Din is considered an injustice (“avel”) and is prohibited, even if no one loses out unfairly. Similarly, violating the rules of a business contract (or even the unspoken social contract that exists in all social interactions) is considered an injustice, even if no one loses out. Since it is an injustice, it is considered harm-causing falsehood, even though no identifiable person is being damaged financially or personally.

QUESTION 9: Your child didn't do his homework. He knows that the teacher will ask for his homework tomorrow at school, and will be annoyed and upset if he doesn't produce it. So your child reads “The Torah's Guidelines for Interpersonal Relationships,” and finds out that one is permitted to alter the truth for the sake of peace. When he asks if he can tell the teacher “I did my homework, but I left it at home,” what should you answer him?

It is prohibited. Even though it is permitted to alter the truth for the sake of peace, the Torah nevertheless prohibits lying anytime it will cause an injustice (“avel,” as described in answer to the previous question). In this case, it is considered an injustice against the social contract of the school to lie to a teacher who has a right (and indeed an obligation) to know how students are growing and performing.

Further, there is a special prohibition against children altering the truth. They have to be mature enough to distinguish between cases when it is permissible and when not. If they are unable to do this, they may develop a negative habit of speaking falsehood for convenience (Yevamos, Rashi, Source C3).

CHAPTER 3

הן צדק; הבטחות *Keeping One's Word*

Introduction

Consider the following scenario:

- You bump into an old school friend. After chatting for a while, you instinctively say: "I'll call you next week so we can get together and catch up!"

Is this a commitment? Maybe it's a promise? Does it matter if your friend thought you were serious or not? What if something happens next week that makes it nearly impossible to meet your friend – do you still have to honor your word? What about the following case:

- You are walking with your wife past a toy store. You see a toy, and exclaim: "I'm definitely going to buy that toy for our daughter's birthday!"

Are you free to renege since your daughter didn't hear your statement?

The Torah's directive to "Distance yourself from falsehood" (Shemos 23:7) prohibits deception of any sort – whether through speech, action or silence – if the resulting deception does not fit with the objective truth or justice (based on Gemara Shevuos 30b, Source A2, Chapter 1).

This chapter focuses on the question of keeping one's word and fulfilling a commitment.

This chapter has eight parts:

- A. Reneging on the three levels of a sale commitment
- B. The approach of Tosafos – a verbal commitment causes an acquisition to occur
- C. The approach of Rashi – a verbal commitment obligates one to fulfill it
- D. A change of circumstances after a verbal commitment (Trei Tari)
- E. A commitment phrased as a promise
- F. A mental commitment
- G. Summary
- H. Practical Questions and Suggested Answers

A. RENEGING ON THE THREE LEVELS OF A SALE COMMITMENT

*A1. Reneging on a sale after the transfer of money
incurs the curse of Beis Din.*

משנה בבא מציעא דף מ"ד ע"א
Bava Metzia 44a (Mishnah)

כל המטלטלים קונין זה את זה. כיצד? משך הימנו פירות ולא נתן לו מעות אינו יכול לחזור בו, נתן לו מעות ולא משך הימנו פירות יכול לחזור בו. אבל אמרו: מי שפרע מאנשי דור המבול ומדור הפלגה הוא עתיד להפרע ממי שאינו עומד בדבורו.

All movables acquire one another. How so?

If [the buyer] took [the] produce from [the seller] but did not give him [the] money [for it], neither one can renege, [because taking the merchandise finalizes the transaction.]

[If the buyer] gave [the seller the] money, but did not take the produce from him, [either one] can [legally] renege, [since the transaction has not yet been legally finalized.] But [the Sages] said [about one who exercises his legal right to renege after the money has been paid:] "The One Who exacted retribution from the people of the Generation of the Flood and from the Generation of the Dispersion [this refers to the generation that built the Tower of Babel and was dispersed by G-d, see Bereishis 11:1-9], He will ultimately exact retribution from someone who does not abide by his word!"

An object is considered "acquired" only after the purchaser does one of the following:

1. Draws it into his domain (Meshichah, as in the case of the Mishnah),
2. Lifts it into the air (Hagba'ah, effective even in the domain of the seller), or
3. Performs some other act of acquisition.

After the act of acquisition neither party may renege (except in special circumstances, like a defective or incorrect sale item, or price fraud [Ona'as Mamon]).

The payment of money, however, does not cause the item to be acquired by the purchaser. Therefore, even after money is transferred in a transaction, the ownership of the object does not change and either side may cancel the sale until an act of acquisition takes place.

Our Sages, however, instructed the Beis Din to pronounce a curse on a buyer or seller who reneges on a transaction after the money has changed hands. The judges in the Beis Din proclaim the curse of “The One Who exacted retribution...” (This is the opposite of the more common positive expression, “He Who blessed our forefathers ... may He bless us...” as appears in the Shabbos morning prayers).

What if, however, there was neither a legal acquisition, nor monetary payment, but only a *verbal* agreement to buy and sell? Can one still arbitrarily renege on a verbal commitment?

(At this point, we are considering *arbitrarily* reneging. In Part D of this chapter we discuss reneging due to a change in price or circumstances. We are also considering a verbal commitment that is *not* phrased as a promise. In Part E we will discuss a commitment phrased as a promise.)

The next sources deal with arbitrarily reneging on a verbal commitment not phrased as a promise.

A2. Reneging on a verbal commitment is considered a lack of trustworthiness (according to R' Yochanan).

בבא מציעא דף מ"ט ע"א ורש"י

Bava Metzia 49a (Gemara and Rashi)

רב כהנא יהבי ליה זוזי אכיתנא, לסוף אייקר כיתנא. אתא לקמיה דרב. אמר ליה: במאי דנקיטת זוזי הב להו, ואידך דברים נינהו, ודברים אין בהן משום מחוסרי אמנה. דאיתמר דברים רב אמר: אין בהן משום מחוסרי אמנה, ורבי יוחנן אמר: יש בהם משום מחוסרי אמנה.

רש"י

מאי דנקיטת זווי הב להו. ואי לא מקבלת מי שפרע.
ואידך. המותר.

דברים נינהו. בלא מעות, רב לטעמיה דאמר כנגדו הוא קונה.

[It once happened that] some people gave Rav Kahana money [as a down payment] on linen. Later, [before they took possession of their purchase] linen appreciated [in price and R' Kahana wished to renege on the agreement.] He came before Rav [for a ruling. Rav] said to him: “[The linen] for which you have taken money give to them. But the rest is [merely] words [i.e. a verbal commitment], and [failure to abide by one’s] words does not [constitute] a lack of trustworthiness.”

[The Gemara discusses Rav’s opinion further:] For it was stated [in reference to] words [i.e. a verbal commitment:] Rav says [that renege on such a commitment] does *not* constitute a lack of trustworthiness, while R' Yochanan says [that renege on such a commitment] *does* constitute a lack of trustworthiness.

Rashi:

[The linen] for which you have taken money, give to them – For if you do not, you will receive the [curse] of “The One Who exacted retribution...”

but the rest – the remainder [that portion of the linen which the down payment didn’t account for].

[they are] words [i.e. a verbal commitment] – without [any transfer of] money. This is consistent with Rav’s reasoning, who said that one only acquires [a portion of the produce] corresponding [to the down payment].

Rav Kahana received some money for a sale of flax. Before he made the delivery, the price of flax increased.

When Rav Kahana asked Rav how to proceed, Rav ruled that he could sell the flax for the new, higher price and use the monies already received as payment. (This would mean that the purchaser would receive less flax than he originally thought he purchased because the sale price increased.)

Regarding the produce for which payment had been received, if Rav Kahana were to renege he would incur the curse of “The One Who exacted retribution...” (as described in Source A1).

As for the remaining produce that was unpaid for and only a verbal commitment, he was completely free to renege on the deal. According to Rav, dishonoring one’s word is *not* a lacking in a person’s trustworthiness or character.

R’ Yochanan however, ruled that Rav Kahana must deliver on the verbal commitment (for the flax not covered by the down payment) even though there was no act of acquisition or payment for it. According to R’ Yochanan, renege on a verbal commitment (even with no malicious intent) is considered a lack of trustworthiness or reliability (in the words of the Sages: “Mechuser Amanah”). Even though it does not incur the curse of the Sages, it is considered improper to behave in such a manner (see Source D5, Shulchan Aruch). In some situations, others may be warned of his lack of reliability to protect them, or it may be announced publicly that the person is not trustworthy (She’elos u’Teshuvos Maharm Mintz 101).

In order to renege on a verbal commitment *without* being considered lacking in trustworthiness, one would need to be pardoned by the other party, or one can pay money as compensation for what they were expecting to receive.

In summary, there are three levels of commitment in a transaction:

1. Legal acquisition of the item being sold – by drawing it into one’s domain or lifting it – and thus neither party can renege;
2. Payment for the item – either party can renege, but he incurs the curse of Beis Din;
3. Verbal agreement regarding the sale and according to Rav, either party can renege but according to R’ Yochanan, to renege is considered a lack of trustworthiness.

A3. *It is prohibited to make a false verbal commitment that one has no intention of keeping (Rav's position).*

בבא מציעא דף מ"ט ע"א ורש"י
Bava Metzia 49a (Gemara and Rashi)

מיתבי, רבי יוסי ברבי יהודה אומר: מה תלמוד לומר הין צדק? והלא הין בכלל איפה היה? אלא לומר לך: שיהא הן שלך צדק, ולאן שלך צדק! אמר אביי: ההוא שלא ידבר אחד בפה ואחד בלב.

רש"י

הין בכלל איפה. שההין שנים עשר לוגין. ואיפה שלשה סאין שהן שבעים ושנים לוגין. אלא שיהא הן שלך בו'. כלומר כשאתה מדבר הן או לאו קיים דברך והלך אותם. שלא ידבר אחד בפה בו'. בשעה שהוא אומר הדבור לא יחזקו לדעתו לשנות. אבל אם נשתנה השער לאחר זמן והוא חוזר בו לפי שינוי השער הין כאן חסרון אמנה.

[The Gemara challenges Rav ruling that reneging on one's word is not a lack of trustworthiness (Source A2):] They raised an objection [from the following Baraisa:] R' Yose the son of R' Yehudah says: What is [the purpose of] scripture stating: a correct "hin"? [The verse reads: "You shall have correct scales, correct weights, a correct Ephah and a correct Hin." Vayikra 19:36.] Surely a Hin was included in the Ephah [mentioned earlier in that verse! An Ephah is a volume measure that is equivalent to 6 Hin. If the Torah is concerned about the slightest deviation from a large measure such as an Ephah, is it not obvious that it is also concerned about a deviation from a smaller measure such as a Hin?]

Rather, [the verse comes] to tell you that your "Yes" [must be] correct, and your "No" must be correct. [The word "hin" can be read as "hein" which means "yes." Therefore, the Torah's mention of "a correct hin" can be interpreted as teaching: When one says "yes" or "no," one should make sure that it is correct, i.e. follow through on the commitment. This verse therefore indicates that contrary to Rav's assertion it is forbidden to renege on a verbal commitment.]

[The Gemara answers that the Baraisa just quoted can be understood in a way which fits with Rav's ruling:]

Abaye said [in support of Rav]: That [Baraisa means] that one should not

say one [thing] with [one's] mouth while [meaning] another [thing] in [one's] heart. [When *making* a verbal commitment one must be sincere. This is not a contradiction to Rav's permit, which applies only to one who was sincere at the time of the commitment and decided to renege later on.]

Rashi:

Hin was included in the Ephab – A *hin* is 12 *lugin* [each *lug* is about 400 ml]. And an *ephab* is three *se'im* which is 72 *lugin*.

Rather, [the verse comes] to tell you that your "yes" etc. – This means: when you say "yes" or "no," fulfill your words, and make them be true.

One should not say one [thing] with [one's] mouth etc. – At the time of that he makes his statement, he should not intend to renege [later]. But if the price [or circumstances under which the original commitment was made] change after time, and he reneges due to the change in price, this is not [considered] a lack of trustworthiness.

The Gemara attempts to show supporting evidence for R' Yochanan's ruling that dishonoring one's word is a lack of trustworthiness. The source is a seemingly superfluous phrase in the Torah requiring one to have correct volume measurements for commerce ("hin tzedek," Vayikra 19:36). Since the phrase is repetitive, it can also be read in a way which obligates one on a Torah level to honor his word (read as "hein tzedek," "a correct 'yes'"), and that not doing so would be a lack of trustworthiness.

The Gemara rejects the evidence, and rather the phrase "hin tzedek" is a specific prohibition against making a false commitment which at the outset one has no intention of ever honoring. In other words, at the time of making the commitment one must intend to fulfill it. This prohibition against making a false commitment is referred to as "echad b'peh v'echad b'lev" (literally: one thing [intention] in one's mouth and another in one's heart). Even though Rav subscribes to this prohibition, he permits one to renege on a verbal agreement if it was originally made in good faith.

A4. It is considered a lack of trustworthiness to renege on a verbal offer of a small gift, since the recipient was expecting to receive it (R' Yochanan's position).

בבא מציעא דף מ"ט ע"א ורש"י
Bava Metzia 49a (Gemara and Rashi)

ומי אמר רבי יוחנן הכי? והאמר רבה בר בר חנה אמר רבי יוחנן: האומר לחבירו מתנה אני נותן לך יכול לחזור בו. יכול, פשיטא! אלא: מותר לחזור בו. אמר רב פפא ומודה רבי יוחנן במתנה מועטת, דסמכא דעתיהו

רש"י

מי אמר רבי יוחנן הכי. דיש בדברים משום חסרון אמנה.

יכול לחזור בו. וקשיא לן יכול פשיטא. דהא לא משך ואין כח צבית דין לכופו.

אלא. ודאי על כרחך מותר לחזור בו קאמר, ואשמעינן דאפילו חסרון אמנה ליכא.

מודה ר' יוחנן במתנה מועטת. שאין מותר לחזור. משום דסמכא דעתיה דמקבל אדיבוריה, וכי אמר מותר לחזור בו במתנה מרובה קאמר, דלא סמכא דעתיה דמקבל דלקיימיה לדיבוריה.

[The Gemara now discusses R' Yochanan's statement that renegeing on a verbal commitment constitutes a lack of trustworthiness:] And did R' Yochanan [really] say this? But Rabbah bar bar Chanah said in the name of R' Yochanan: If one says to his fellow: "I will give you a present," he is able to renege [on this commitment].

[Before showing the contradiction between R' Yochanan's statements, the Gemara clarifies this last statement:]

[What does R' Yochanan mean by saying that] he is "able" [to renege? But that is] obvious! [The transaction was never finalized!] Rather, [R' Yochanan must mean that] he is *permitted* to renege. [Hence, this teaching by R' Yochanan contradicts his ruling cited above that renegeing on a verbal commitment constitutes a lack of trustworthiness?]

[The Gemara resolves the contradiction by qualifying R' Yochanan's ruling that one may renege on a promise to convey a gift:] Rav Pappa said: But R' Yochanan agrees concerning a small gift [that is improper to renege], because [the recipients] believe [him. R' Yochanan permits renegeing only on an offer of large gift, for such an offer is not taken seriously.]

Rashi:

And did Rabbi Yochanan [really] say this? – that [renege] on one's words is considered a lack of trustworthiness?

He is able to renege [on this commitment] – we have a difficulty: that he is “able” [to renege] is obvious since neither [party acquired the object Halachically by] drawing it [into their domain], and therefore Beis Din does not have the power to force [the transaction to be completed as agreed].

Rather – certainly we have to say, that what was meant is that it is *permitted* to renege, and [this statement] is teaching us there this is not considered a lack of trustworthiness.

R' Yochanan agrees concerning a small gift – that it is not permitted to renege, because [the recipient] is relying on your word to receive it. And that which it says “it is permitted to renege,” is referring to a large gift, where the recipient does not rely on you to fulfill your word.

According to R' Yochanan, if one offers to give another a gift, and the recipient is expecting him to give it, then if the giver changes his mind and does not do so, he is considered lacking in trustworthiness. This applies only to small gifts. If, however, the gift is substantial, involving expense or effort, then it is assumed that the recipient did not fully expect to receive it and therefore the giver is *not* considered lacking in trustworthiness.

Therefore, according to Rabbi Yochanan, one is obligated to honor a commitment if the recipient expects it to be fulfilled (as in the case of a small gift). If the recipient did not fully expect to receive it, he is not obligated to fulfill his commitment (as in the case of a large gift). His source is the verse “hin tzedek” (Vayikra 19:36 in Source A3).

Rav (in Source A3), however, uses the verse as the source requiring one to be sure that *at the time* of the commitment he does intend to honor it; but what happens later is not the subject of this verse.

Regarding the practical Halacha, the Rishonim (literally early authorities, c. 1000 CE to c. 1500 CE) – the Rif and the Rosh below – rule according to both R' Yochanan *and* Rav!

A5. *The Halacha follows both R' Yochanan (reneging on a verbal commitment is a lack of trustworthiness) and Rav (at the time of making the commitment one must intend to fulfill it).*

ר"ף פרק הזהב (בבא מציעא) דף כ"ט ע"א בדפי ר"ף

Rif, *ibid.*, Perek HaZahav, 29a

איתמר דברים רב אמר אין בהם משום מחוסרי אמנה ורבי יוחנן אמר יש בהם משום מחוסרי אמנה ואף רבי יוחנן לא אמר אלא במתנה מועטת משום דסמכא דעתיה אבל במתנה מרובה דלא סמכא דעתיה לא והלכתא כר' יוחנן תניא ר' יוסי ברבי יהודה אומר מה ת"ל והין צדק והלא הין בכלל איפה אלא שיהא הן שלך צדק ולא שלך צדק ופירשה אביי שלא ידבר אחת בפה ואחת בלב.

It was stated [by the Amoraim, in reference to] words [i.e. a verbal commitment:] Rav says [that reneging on such a commitment] does *not* constitute a lack of trustworthiness, while R' Yochanan says [that reneging on such a commitment] *does* constitute a lack of trustworthiness.

And even R' Yochanan [who advances the more stringent opinion] did not state [his ruling] except by [commitments to give] a small gift. For [in such cases, the recipient] relies [on the giver to follow through]. However, by a [commitment of a] large gift, where there is no such reliance, [then even R' Yochanan agrees that reneging does] not [constitute a lack of trustworthiness].

The Halacha follows R' Yochanan.

It was taught in a Baraisa: R' Yose the son of R' Yehudah says: What is [the purpose of] scripture stating: a correct "hin"? [The verse reads: "You shall have correct scales, correct weights, a correct Ephah and a correct Hin." Vayikra 19:36.] Surely a Hin was included in the Ephah [mentioned earlier in that verse. An Ephah is a volume measure that is equivalent to 6 Hin. If the Torah is concerned about the slightest deviation from a large measure such as an Ephah, is it not obvious that it is also concerned about a deviation from a smaller measure such as a Hin?]

Rather, [the verse comes] to tell you that your "Yes" [must be] correct, and your "No" must be correct. [The word "hin" can be read as "hein" which means "yes." Therefore, the Torah's mention of "a correct hin" can be interpreted as teaching: When one says "yes" or "no," one should make sure that it is correct, i.e. follow through on the commitment.]

Abaye explained [that Baraisa means] that one should not say one [thing] with [one's] mouth while [meaning] another [thing] in [one's] heart. [When *making* a verbal commitment one must be sincere.]

The Rif rules in accordance with both 1.) R' Yochanan *and* 2.) Rav:

1. The Rif rules in accordance with R' Yochanan that reneging on a verbal commitment for a small gift is considered a lack of trustworthiness. (This follows the normal rule that in a dispute between Rav and R' Yochanan, the Halacha follows the latter.)
2. However, the Rif also rules in accordance with Rav's understanding of the Baraisa as explained by Abaye – that “hein tzedek” is a specific prohibition against making a commitment which at the outset one has no intention of ever honoring.

In the next source, the Rosh explains the seeming contradiction in the Rif.

A6. The Rosh Explains the Rif

רא"ש בבא מציעא פרק ד' סימן י"ב
Rosh, Bava Metzia 4:12

תמיהה לי מה הוצרך רב אלפס כאן הך פירושו דאביי, דלכאורה משמע דאליבא דרב הוצרך לפרש כן. דלר' יוחנן אתיא ברייתא כפשטה, לאשמועינן דדברים יש בהן משום מחוסרי אמנה. ויראה דסבר רב אלפס ז"ל דנהי דפריך מהך ברייתא לרב ומשמע' לר' יוחנן דשמעינן מיהא דדברים יש בהן משום מחוסרי אמנה. לבתר דמפליג לר' יוחנן בין מתנה מרובה למועטה מסתבר דלא שמיע ליה לר' יוחנן מקרא. אלא עיקר קרא אתא לאחד בפה ואחד בלב. דאי שמיע ליה לר' יוחנן מקרא לא מסתבר לחלק בין מתנה מרובה למועטה.

I am perplexed as to why the Rif needed to quote Abaye's explanation [of the Baraisa], for it seems that [Abaye's] explanation was only stated as to support Rav's ruling. [But the Rif does not rule like Rav.] For according to R' Yochanan, we can understand the Baraisa (that one's 'yes' must be correct) as it reads simply – that it teaches that [reneging on one's] words is a lack of trustworthiness, [even if at the time of the commitment one fully intended to honor it]!

[To answer this question], it would appear that the Rif's view is that although this Baraisa was indeed [originally] cited as a question on Rav, and that R' Yochanan [actually] used it as his source that [renege on one's] verbal [commitment] does constitute a lack of trustworthiness, [nevertheless] once [we see that] R' Yochanan makes distinctions between large and small gifts – it would appear that he did *not* use the verse as his source. Rather, [even he agrees that] the focus of the verse is that one should not say one [thing] with [one's] mouth while [meaning] another [thing] in [one's] heart. For if R' Yochanan did [indeed] use the verse as his source, it would not make sense to make a distinction between large and small gifts [since the verse made no such distinction].

The Rosh explains that in the Rif's view, the Gemara originally believed that R' Yochanan's source for a lack of trustworthiness (Mechusar Amanah) was the verse "hin tzedek" (as in Source A3).

Later however, R' Yochanan differentiated between a small gift (regarding which there is Mechusar Amanah) and a large gift (as in Source A4). Since the verse of "hin tzedek" makes no such differentiation, this cannot be his source.

Further, since it is not considered a lack of trustworthiness to renege on a large promise, it implies that R' Yochanan is not concerned with honoring one's word per se (for if he were, one would need to fulfill a large promise as well). Instead, the source is the fact that one is disappointing another person if one reneges on a verbal offer which the other party was expecting.

Finally, regarding the verse "hin tzedek," R' Yochanan agrees with Rav, that it teaches that one should not make a commitment that one has no intention of fulfilling (the prohibition of "echad b'peh v'echad b'lev").

What we see from the above is that according to the Rif, if one makes a verbal commitment, and at the time of the statement he never intended to honor it, then he is violating "hin tzedek," which the Sages read as "hein tzedek," "a correct 'yes.'" However, if one did have in mind to honor his word at the time that he stated it, but later had second thoughts, he may renege so long as others were not relying on his word.

In the next sources, Tosafos defines and describes the Halachic consequences of a verbal commitment.

B. THE APPROACH OF THE TOSAFOS – A VERBAL COMMITMENT CAUSES AN ACQUISITION TO OCCUR

B1. A verbal commitment causes an acquisition.

תוספות כתובות דף ק"ב ע"א
Tosafos, Kesubos 102a

ועוד דשמעינן ליה לרבי יוחנן בהזהב (ב"מ דף מט.) הנותן מתנה מועטת לחבירו קנה אע"פ שלא הגיע לידו דגמר ומקני.

Also, we know that according to Rabbi Yochanan in [Chapter] HaZahav (Bava Metzia 49a), that one who gives a small gift to his fellow, [that fellow] acquired it, even though it has not yet reached his hand. For [the giver] is resolute and it is [therefore] acquired.

It is clear from Tosafos that according to R' Yochanan, a verbal commitment to give an item which the recipient expects to receive causes it to be acquired by the recipient (through a "kinyan dibbur," or a *verbal acquisition*). Like a commitment to give a small gift, the acquisition is weak enough to allow a retraction by the seller (or giver), in which case the item returns to the seller. Retracting however is considered a lack of trustworthiness.

Since, according to Tosafos the verbal commitment causes the item to be acquired, the whole concept of a lack of trustworthiness is only relevant to physical objects that can be acquired (like, "I will give you my pencil at school"), but not to commitments regarding non-physical things (like, "I will meet you at school") or items that are not yet extant (like, "I will give you one of the rolls that I will bake later") (She'elos u'Teshuvos HaRosh 102:10).

In the following sources, we see supporting evidence for Tosafos' ruling.

B2. A Yisrael can withhold Terumah as repayment for a loan he made to a Kohen friend.

גיטין דף ל' ע"א ורש"י
Gittin 30a (Gemara and Rashi)

מתני'. המלוה מעות את הכהן ואת הלוי ואת העני להיות מפריש עליהן מחלקן מפריש עליהן בחזקת שהן קיימין, ואינו חושש שבמאמת הכהן או הלוי, או העשיר העני...
גמ'. ואף על גב דלא אתו לידיה? אמר רב: במכרי כהונה ולויה.

רש"י

להיות מפריש עליהן מחלקן. המלוה הזה כשיפריש תרומותיו ימכור התרומה ויעכב הדמים לעלמו צפרעון החוב זה בשביל הכהן וכן המעשר ראשון בשביל לוי ומעשר עני בשביל עני והמעשרות יעכב ויאכל אלא שמפריש מעשר מן המעשר לכהן שהן מותרין לזרים מכיון שאין כאן גזל מתנות שכבר נתן דמיהם לכהן זה ובשעת ההלואה פסק להם דמים.

ואע"ג דלא אתו לידיה. בתמיה אע"פ שאינו נותן לכהן ויחזירם לו קתני מתני' דיפריש עליהן וכיון דלא מנו לידיה מאן זכי ליה להאי כהן הך תרומה שיקבלנה זה בחובו והיאך ילא ידי נתינה.

במכרי כהונה. כמו איש מאת מכרו (מ"ב יב) שהם מכירו ואוהביו דאינו רגיל לתת תרומות ומעשרות אלא לכהן זה הלכך כיון דמלתא דפשיטא היא דלידיהו יהיב להו אסחי להו שאר כהני דעתייהו והוה כמאן דמנו לדייהו דהני.

[The Mishnah below is dealing with the topic of relying upon a Chazakah, the presumption that a person known to have been living is still alive. The Gemara that follows answers a question relevant to our topic of reneging on a commitment. The elucidation in brackets is based on Rashi.]

Mishnah:

[If] someone lends money to a Kohen, a Levi or a poor person [with the understanding] that he will separate from [his crop] the portions [to which they are entitled and retain them as payment] against [the loans], he may separate [the portions] against [the loans] on the assumption that [these debtors] are [still] alive, and he [need] not [be] concerned that the Kohen or Levi might have died, or that [the] poor person [might have] become wealthy.

Gemara:

[The Mishnah stated that if someone lends money to a Kohen, Levi or poor person, he may keep the Terumah or Maaser due the borrower as

payment for the loan. The Gemara questions this ruling:]
 Now, [is the arrangement valid] even though [the portions] have not [yet] come into the hands of [the borrower, as the Mishnah implies? How can that be?]

[The Gemara answers:]

Rav said: [The Mishnah deals] with [lenders who are] good friends of the Kohen or Levi [and therefore they give all their Terumah or Maaser Rishon only to this Kohen or Levi. Consequently, the Terumah or Maaser Rishon belongs to this Kohen or Levi as soon as it is separated, even though it hasn't come into their hands yet, and he can therefore assign it as payment for the loan.]

If a Yisrael always gives his Terumah (and Maaser) to a particular Kohen, then that Kohen is viewed as having acquired the produce at the time that the Yisrael separates and designates the Terumah, even though the Kohen has not yet *physically* acquired the Terumah. The acquisition works by virtue of the fact that he is the Kohen to whom this farmer always gives his Terumah, and no other Kohanim expect to receive it.

Therefore, if the Yisrael were to lend the Kohen money, the Yisrael could designate some produce as Terumah which would belong to the Kohen, and then keep the Terumah for himself as payment for the loan he made to the Kohen. In this way he has fulfilled the Mitzvah of giving Terumah and has received repayment of his loan.

B3. A Yisrael who regularly gives Terumah to a Kohen is considered to have made a verbal commitment even for the future.

תוספות בבא בתרא דף קכ"ג ע"ב
 Tosafos, Bava Basra 123b

הכא במכירי כהונה (ולויה) עסקינן. בכל דוכתא עביד מכירי כהונה מוחזק בפרק כל הגט (גיטין דף ל.). המלוה מעות את הכהן והלוי והיינו טעמא שזוהו מתנה מועטת ואסור לחזור בו ואפי' בדברי בעלמא ואע"פ שאם רצה יכול לחזור בו מכל מקום כל כמה דלא הדר הוי כמוחזק.

Here [we are dealing with a case where the Yisrael is a] good friend of the Kohen (and Levi) – In all places [in the Gemara] the “Kohen who is a good friend” is considered [as though] he were in possession [of the Terumah]. [For example,] in Chapter Kol HaGet (Gittin 30a) [Source B2, the Mishnah says], “One who lends money to a Kohen or Levi ... [may keep the Terumah or Maaser due the borrower as payment for the loan].”

The reason this is so, is that [the commitment to give this Kohen the Terumah of this crop is viewed as] a small gift, from which it is prohibited to renege. Even if [the commitment to give that small gift] was only verbal [without a physical acquisition, nevertheless it is forbidden to retract]. And even though [if the owner of the crop] wanted to retract [from always giving to this Kohen], he would be allowed to, nevertheless, so long as he does not – [the Kohen] is seen as being in possession [of that Terumah].

Tosafos explains that the rule of “The Kohen with whom you are familiar” is based on the two points:

1. Since the Yisrael regularly gives his Terumah produce to a particular Kohen, his actions can be interpreted as if he has made a verbal commitment for the future as well.
2. Since the Yisrael cannot keep any of the Terumah (since it is the property of Kohanim), his only benefit from it is the right to choose which Kohen to give it to (for which he receives the good will of the recipient Kohen, known as “tovas hana’ah”). Therefore, from the view point of the Yisrael, it is considered a small gift.

Therefore, combining points 1 and 2, it is as if the Yisrael has made a verbal commitment to give a small gift, and unless the Yisrael reneges (which he has the right to), the Kohen has Halachically acquired it from the moment the Yisrael designated it as Terumah, even if the Kohen did not yet *physically* acquire it.

In the next source, we discuss the question of why the Yisrael (or anyone who makes a verbal commitment that the recipient was expecting to receive) has the right to renege on his word (albeit that this shows a lack of trustworthiness), if one’s word causes an acquisition.

*B4. A verbal commitment causes an acquisition,
except that the giver has the right to renege.*

קובץ שעורים לבבא בתרא סי' שע"ד
Kovetz Shiurim, Bava Basra 374

שע"ד) בתוס' כתבו דמכירי כהונה הוי כמו מתנה מועטת דאסור לחזור בו ומ"מ מהניא חזרתו ולכאורה משמע, שמכירי כהונה לא זכו עדיין עד שתבא לידם, וכן הבין בקצה"ח סי' רע"ח אבל באמת א"א לפרש כן, דהא במלוה מעות את הכהן, גיטין ל', מבואר דבמכירי כהונה יכול למכור חלקו, ואי נימא דלא זכה עד שתבא לידו, איך ימכור דבר שאינו שלו? ...

ובתוס' כתובות ק"ב כתבו דיש דברים שאינן צריכין קנין, דכיון דגמר ומקני א"צ מעשה קנין, והביאו ראיה, ממתנה מועטת, ב"מ מ"ט, והיינו מדיכול לעשותו תרומת מעשר על מקום אחר, אלמא דקני, והוא תמוה לכאורה, דהא מבואר שם דיכול לחזור בו, ואי נימא דקנה, אמאי יכול לחזור, וצ"ל, כמו שמצינו – קי"ג (ב"ב קי"ד ע"א) – קנין עד אימת יכול לחזור בו, והוא דוקא בקנין סודר, והטעם, כיון שלא הוציא עדיין הדבר מרשותו, קים להו לרבנן שכונתו היתה שיכול לחזור, ה"נ במכירי כהונה, אף דגמר ומקני לאלתר, מ"מ דעתו להקנותו רק בתנאי אם לא יחזור בו עד שיבא ליד הכהן, ואם לא חזר בו, קנה הכהן למפרע, ומשו"ה מיקרי מוחזק אצל הכהן.

Tosafos writes that [in a case where] the Kohen is a good friend [the produce that the Yisrael separates is owed to the Kohen] like a [commitment for a] small gift from which it is forbidden to renege. Nevertheless, [Tosafos writes that] renegeing will indeed be effective. It would then seem that [from Tosafos] that where the Kohen is good friend, he does not [fully] acquire [the Terumah] until it reached his hands. The Ketzos HaChoshen (Ch. 278) has the same understanding [as Tosafos].

But in truth, it is impossible to explain [Tosafos] in this way. For in the case in Gittin 30a [Source B2] of the loan of money to the Kohen, it is clear that the Kohen friend can sell his [eventual] portion [of the crop – i.e. the Terumah, by taking its cash value now]. But if you argue that he does not acquire it until it reaches his possession, how then can he sell that which is not his?! ...

Tosafos, in Kesubos 102a [Source B1, above], writes that there are certain things that do not need a formal acquisition. For since there was a real resolution to give it, there is no need for an act acquisition.

He cites evidence for this from the case of a [commitment of a] small gift (Bava Metzia 49a). That is, from the fact that [a Levi who is owed Maaser by a Yisrael who committed it to him] is able to designate that [produce that he has not yet physically acquired] as Terumas Maaser for other produce that he [the Levi] has [an outstanding obligation to tithe], we see that he has indeed “acquired” it [from when it was verbally committed to him].

However, this is very difficult – for it is clear [in the Gemara] there that [the owner] is allowed to retract [and not give this Maaser to this Levi]. Now if [the Levi] truly did acquire it, how then can he retract?!

We must say, as we have found [that the Gemara on Bava Basra 114a deals with the following question], “When making an acquisition, up until which point may one retract?” This [question] is [asked] specifically in reference to the acquisition of a handkerchief [where a cloth, is given in exchange for another item]. The reason for this [question of retraction in the context of this type of acquisition] is that since the person has not yet taken the item [that he is receiving in exchange for his handkerchief], the Rabbis assume his intention was to maintain the right to retract. Here too, by the Kohen friend, even though there is an immediate resolute commitment, nevertheless [the owner’s] intention is that he only wishes to transfer it to him on condition that he retains the ability to renege until it reaches the Kohen’s possession. If he does not renege, then it will have been the Kohen’s from the beginning [i.e. from the time of the original commitment]. For this reason, [the Terumah] is indeed viewed as being in the Kohen’s possession [from the time that it is separated from the other produce].

R' Elchanan Wasserman (author of Kovetz Shiurim) explains that according to Tosafos, a verbal commitment is a form of acquisition, except that the giver (or seller) has the right to renege. So long as the giver does not renege, the item is seen as acquired by the recipient from the moment of the commitment.

A parallel to this case is that of finalizing an acquisition by means of transferring a handkerchief (“kinyan sudar”) in which the seller by default has the right to retract (until physical acquisition of the sale item), even though he did not explicitly reserve this right. This is unlike a physical acquisition (through Meshichah [drawing the sale item into one’s domain] or Hagba’ah [lifting the item]) where the seller *cannot* retract unless he explicitly states that he reserves this right.

According to Tosafos, the principle that a verbal commitment to give an item causes the item to be acquired by recipient, is only true where the recipient *expects* to receive it – as in the case of a small gift. However, a commitment for a large gift does not result in it being acquired since the recipient never expected to receive it, and never relied on it.

We now present the approach of Rashi (and the Rambam) – that a verbal commitment obligates one to fulfill it, but there is no transfer of ownership.

C. THE APPROACH OF RASHI – A VERBAL COMMITMENT OBLIGATES ONE TO FULFILL IT

C1. One has a Torah obligation to fulfill one's verbal commitments (from the verse "hin tzedek").

רש"י כתובות דף פ"ו ע"א, וגליון הש"ס לרבי עקיבא איגר שם
Rashi, Kesubos 86a and Gilyon Ha'Shas by R' Akiva Eiger

רש"י

פריעת בע"ה מצודה. מלוה עליו לפרוע חובו ולאמת דבריו דכתיב הן לך שיהא הן שלך לך ולא שלך
לך (בבא מליעא דף מט ע"א)

גליון הש"ס.

רש"י ד"ה פריעת בע"ה וכו' ולא שלך צדק. ב"מ דף מט ע"א וע"ש וצע"ק.

Rashi:

The payment [of one's debt] to his creditor is a Mitzvah – It is a mitzvah upon him to pay his debt, and to be true to one's word. As the verse says, "A correct hin" – [the verse comes to tell you] that your "Yes" [must be] correct, and your "No" must be correct. [The word "hin" can be read as "hein" which means "yes." Therefore, the Torah's mention of "a correct hin" can be interpreted as teaching: When one says "yes" or "no," one should make sure that it is correct, i.e. follow through on the commitment. See Source A3 for more.]

Gilyon HaShas:

[This is based on] Bava Metzia 49a [Source A3], see there. However, this needs some more research [i.e. Rashi's use of that Gemara in this context is somewhat troubling].

Rashi explains that the Mitzvah to pay off a debt is sourced in the Torah obligation to fulfill one's verbal commitments derived from the verse of "hin tzedek" (Source A3 above).

It would seem that R' Akiva Eiger is troubled by the fact that according to the conclusion of the Gemara in Bava Metzia (Source A3), the verse "hin tzedek" is the source for the prohibition against making a false commitment which at the outset one has no intention of ever honoring ("echad b'peh v'echad b'lev"), but the verse does *not* teach that one has an obligation to fulfill the commitment once it was made in good faith.

However, Rashi seems to understand that according to the conclusion of the Gemara, R' Yochanan does indeed understand the verse of "hin tzedek" to teach that one is obligated to fulfill his verbal commitments, and that not doing so is considered a lack of trustworthiness (Mechusar Amanah).

C2. One has a Torah obligation to try to fulfill one's verbal commitments.

שביעית פרק י' משנה ט' ופירוש המשניות להרמב"ם
Mishnayos Shvi'is 10:9, Rambam's Commentary

משנה: ... כל המטלטלין נקנין במשיכה וכל המקיים את דברו רוח חכמים נוחה ממנו:
רמב"ם: אבל כל המקיים דברו ויחייב עצמו להיות משאו ומתנו באמונה ולא יחזור בו ואף על פי שאין שם משיכה רוח חכמים נוחה הימנו ואמרו ע"ה (ב"מ פ"ד דף מט) איפת צדק והין צדק הין שלך יהיה צדק ר"ל כשתדבר דבר השלימהו לטוב:

Mishnah:

All moveable property is acquired through drawing [the item into one's domain]. All who fulfills his word – the spirit of the Sages is pleased with him.

Rambam:

Anyone who fulfills his word, and obligates himself to have his business dealings be with integrity, and to not renege – even though there was no [act of acquisition by] drawing [into one’s domain] – the spirit of the Sages is pleased with him. And [the Sages] of blessed memory said (Bava Metzia 49a): “[You shall have...] a correct Ephah and a correct Hin.” [Vayikra 19:36. This teaches that] your “Yes” [must be] correct, and your “No” must be correct. [The word “hin” can be read as “hein” which means “yes.”] This means, when you say something [you must] fulfill it for the good.

The Rambam also sees the verse “hin tzedek” as the Torah source obligating one to fulfill his verbal commitments.

We are left with a question: according to Rashi (and the Rambam) what is R’ Yochanan’s source for the prohibition against making a false commitment which at the outset one has no intention of ever honoring (“echad b’peh v’echad b’lev”)?

It is possible to say that R’ Yochanan would rule that the prohibition against making a false commitment is included in the Mitzvah to “distance yourself from falsehood” (Shemos 23:7, see Chapter 1). Therefore, if a person makes a commitment which at the outset one has no intention of ever honoring, then at that moment he has spoken falsehood. Even if he later has regret and fulfills his word, it doesn’t erase the fact that he spoke falsehood!

However, one who makes a commitment today with good intent to fulfill his word tomorrow is not speaking with the certainty of a prophet – for who knows what tomorrow will bring? Rather, his commitment is to be understood with the unspoken caveat, “As of now, this is what I plan to do.” Therefore, if he were to renege tomorrow, he would not have violated the Mitzvah to “distance yourself from a falsehood” (however, he has violated “hein tzedek,” the Torah obligation to fulfill one’s word, unless there was a change of circumstances that caused him to renege [Part D below]).

The Sefer HaChinuch, in the next source, has a more stringent approach.

C3. The Mitzvah to “distance yourself from falsehood” also obligates one to fulfill one’s verbal commitments.

ספר החינוך מצוה ת”ז
Sefer HaChinuch, Mitzvah no. 407

וכן בכל מה שידור האדם לקרבן או לבדק הבית או לצדקה או לבית הכנסת וכיוצא בהן עובר עליהן משום לא יחל. אבל בענינים אחרים, כגון הנודר לחברו דבר או האומר דבר פלוני אעשה או לא אעשה שלא בלשון נדר ואיסר וקונמות, אף על פי שהוא מכוער ולא יעשו כן רק פחותי הנפש בבני אדם, אינו עובר בלא יחל אלא בענין שכתבנו. ואמנם על הכל נאמר בתורה [שמות כ”ג, ז’], מדבר שקר תרחק.

And so it is with any vow a person makes to [obligate himself to bring] an offering, or [a contribution] to the temple treasury, or [a contribution] to charity, or to the synagogue, or anything similar – [if he reneges on that commitment] he thereby violates: “He shall not desecrate his word” [Bamidbar 30:3].

However, with respect to other [commitments], such as where one promises his friend something, or where one says, “I will do such and such” or “I will not do such and such” – where the commitment was not made in the form of a classic vow, prohibition, or ban – even though [reneging on such a commitment] is despicable, and only the lowly of spirit would do such a thing, [nevertheless] he does not violate “He shall not desecrate his word” other than in the ways which we wrote [in the paragraph above].

However, for all [reneging on commitments – be they vows or simple commitments to friends], the Torah states, “Distance yourself from falsehood” (Shemos 23:7).

According to the Sefer HaChinuch, the mitzvah to “Distance yourself from falsehood” requires that one also *fulfill* one’s verbal commitments!

C4. It is prohibited to renege on a commitment to a child, since it teaches them to lie.

סוכה דף מ"ו ע"ב
Succah 46b (Gemara)

ואמר רבי זירא: לא לימא איניש לינוקא דיהיבנא לך מידי ולא יהיב ליה, משום דאתי לאגמוריה שיקרא, שנאמר למדו לשונם דבר שקר.

And R' Zeira said: A person should not say to a child, "I will give you something," and [then] not give [it to] him, because he thereby teaches him to lie, as it is stated: "They train their tongue to speak falsehood [Yirmiyahu 9:4]."

One who verbally commits to give something or do something for a child, is obligated to fulfill his word in order that the child should not think that it is permissible to lie.

Further, one is obligated to fulfill a commitment to a child even for a large gift (*Matanah Merubah*," as in Source A4), since it is the nature of a child to rely on you and expect to receive it, the way an adult would for a small gift ("*matanah mu'etes*"). This is especially important for parents and educators.

In conclusion, there are two approaches as to why renegeing on a verbal commitment that the recipient was expecting to receive (as in the case of a small gift) is considered to be lacking in trustworthiness:

1. According to Rashi: There is a Torah obligation to fulfill all verbal commitments (even for non-physical things) from the verse "hin tzedek" (Source C1). Not doing so is considered a lack of trustworthiness.
2. According to Tosafos: a verbal commitment causes an acquisition, and renegeing is considered improper and a lack of trustworthiness (regarding things that could be physically acquired) (Source B1).

For the purposes of practical Halacha, modern day Poskim (Halachic authorities) are split between Rashi and Tosafos. Most Poskim, however, tend to rule like Tosafos (Igros Moshe Yoreh De'ah 1:147, sec. 2) even though there is supporting evidence for Rashi (Remah, Yoreh De'ah 264:1).

D. A CHANGE OF CIRCUMSTANCES AFTER A VERBAL COMMITMENT (TREI TARI)

Until now we've been discussing the lack of trustworthiness due to renegeing arbitrarily on a verbal commitment.

In the following sources, we will see a debate among the Rishonim whether it is also considered a lack of trustworthiness to renege due to an unexpected change in price or circumstances that are beyond your control or that you could not have known about at the time of the commitment.

D1. If the price changes, then renegeing is not considered a lack of trustworthiness.

בעל המאור בבא מציעא פרק רביעי (ברי"ף כ"ט ע"ב)
Ba'al HaMa'or, Bava Metzia 29b (in Dapei HaRif)

פסק הרי"ף ז"ל כר' יוחנן דאמר דברים יש בהם מחוסרי אמנה ולי נראה ה"מ בחד תרעא אבל בתרי תרעי לית בהו משום מחוסרי אמנה ...

The Rif rules like Rabbi Yochanan who said that [renegeing from] a verbal [commitment] is [considered] a lack of trustworthiness. It appears to me, [that this only applies] where there is one price [i.e. the price does not change after the commitment was made]. But in [a case where] there are two prices [i.e. the price changed after the time of the commitment], then [retracting] is not a lack of trustworthiness."

The Ba'al HaMa'or rules that if the price changes between the time of the verbal commitment and the physical acquisition of the item, then

either party can renege and it is not considered a lack of trustworthiness. This permit is called Trei Tari (two prices). The price can change either because the seller decides to increase the price, or because standard market price increases.

According to approach of Tosafos – who rules that a verbal commitment causes an acquisition except that one has the right to renege (Source B1) – in a case of a price change, the acquisition is not effective, both in a case of a verbal commitment as well as a case where the money was already paid.

D2. Reneging after a price change is not considered a lack of trustworthiness.

רא"ש בבא מציעא פרק ד' סימן י"ד
Rosh, Bava Metzia 4:14

ודברים בלא מעות אין רוח חכמים נוחה הימנו כר' יוחנן דאמר יש בהן משום מחוסרי אמנה. וכתב בעל המאור ז"ל בחדא תרעא אבל בתרי תרעי לית בהו משום מחוסרי אמנה.

[For one who reneges from] a verbal commitment – where no money [changed hands], the spirit of the Sages is not pleased with him. [This ruling is] like Rabbi Yochanan – who says [that reneging on verbal commitments] does constitute a lack of trustworthiness.

The Ba'al HaMa'or wrote: “[This only applies] where there is one price [i.e. the price does not change after the commitment was made]. But in [a case where] there are two prices [i.e. the price changed after the time of the commitment], then [retracting] is not a lack of trustworthiness.”

The Rosh rules like the Ba'al HaMa'or: that reneging after a price change is not considered a lack of trustworthiness.

In the following sources, we see Rishonim who rule in the opposite direction.

D3. Reneging after a price change is considered a lack of trustworthiness.

רמב"ן בבא מציעא פרק רביעי (ברי"ף כ"ט ע"ב) ד"ה ועוד פסק הרי"ף
Ramban, Milchemes Hashem, Bava Metzia 29b (in Dapei HaRif)

ופירוש תרי תרעי כגון דיהיב זוזי על מנת לקבל לאחר זמן ולא לקבל עכשיו שכיון שהתנה שלא ליתן עכשיו ותרעא עביד דמשתנה דעתיה אתרעא זילא כלומר שאם ישתנה השער באותו זמן שלא יקבל אלא כשער הזול ומפני כך מקדים מעותיו ואינו נוטל עכשיו אלא לאחר זמן וכבר מפורש בפירוש רבינו שלמה ז"ל.

The explanation of “two prices” [i.e. a case where the price changes after the verbal commitment and reneging is permitted] is for example where money was given on the condition to receive [the goods] after [some] time, but not to receive it now. Since he [specifically] stipulated that [the seller] should not give [the goods] now, and [it is known] that the market price fluctuates, [it is apparent that the buyer’s] intention was to get it at the lower price. That is, [it is understood that] if the price changes over that time, he will get it at the lower price. That is [exactly] why he gave the money early, and did not take possession [of the the goods] now, rather some time later. This [way of understanding the case] has already been explained in the commentary of Rabbeinu Shlomo.

The Ramban rules that the case of “trei tari,” where it is permitted to renege, is where the money was paid *early* with intent to receive the goods some time *later*, a price change *will* allow either party to renege.

However in a regular sale where the money was paid to receive the goods immediately, and before receiving them the price dropped, the buyer cannot renege (and claim that he wants to buy at the new reduced price). Similarly, if a verbal commitment was made regarding the sale, reneging would be considered a lack of trustworthiness.

In the next source, Rashi and Tosafos rule like the Ramban. Earlier (in Source A2), a case was cited involving Rav Kahana where the price of linen increased after some of the payment was received. R' Yochanan ruled that reneging on a verbal commitment to give a small gift is.

considered a lack of trustworthiness and is improper. Rav ruled that renegeing is acceptable, but that making a false commitment with no intention of ever fulfilling it is prohibited (Source A3). In the next source, Rashi comments on Rav's ruling

D4. Renegeing after a price change is considered a lack of trustworthiness.

רש"י בבא מציעא דף מ"ט ע"א, ותוספות שם
Rashi, Bava Metzia 49a, Tosafos, ibid.

רש"י

שלא ידבר אחד בפה כו'. נשעה שהוא אומר הדבור לא יהא צדעתו לשנות, אבל אם נשתנה השער לאחר זמן והוא חוזר בו לפי שינוי השער. אין כאן חסרון אמנה.

תוס'

מוודה רבי יוחנן במתנה מועטת. ויוקר נמי הוי כמו מתנה מועטת.

Rashi: *One should not say one [thing] with [one's] mouth [while meaning another thing in one's heart] – That is, [Rav can understand the verse "hin tzedek" to teach that] at the time of that he makes his statement, he should not intend to renege [later]. But if the price [or circumstances under which the original commitment was made] change after time, and he reneges due to the change in price, this is not [considered] a lack of trustworthiness.*

Tosafos: *Rabbi Yochanan agrees concerning a small gift [that it is improper to renege] – The increase in value is also [considered] a "small gift."*

The Ramban rules that the case of "trei tari," where it is permitted to renege, is where the money was paid *early* with intent to receive the goods some time *later*, a price change *will* allow either party to renege.

However in a regular sale where the money was paid to receive the goods immediately, and before receiving them the price dropped, the buyer

cannot renege (and claim that he wants to buy at the new reduced price). Similarly, if a verbal commitment was made regarding the sale, renegeing would be considered a lack of trustworthiness.

In the next source, Rashi and Tosafos rule like the Ramban. Earlier (in Source A2), a case was cited involving Rav Kahana where the price of linen increased after some of the payment was received. R' Yochanan ruled that renegeing on a verbal commitment to give a small gift is considered a lack of trustworthiness and is improper. Rav ruled that renegeing is acceptable, but that making a false commitment with no intention of ever fulfilling it is prohibited (Source A3). In the next source, Rashi comments on Rav's ruling.

D5. The Remah is stringent and the S'mah is lenient.

שולחן ערוך חושן משפט סימן ר"ד סעיף ז,
 רמ"א סוף סעיף י"א, ושמ"ע ס"ק י"ב
 Shulchan Aruch, Choshen Mishpat 204:7,
 Remah 204:11 (end), S'mah 204:12

שולחן ערוך

הנושא ונותן בדברים בלבד, הרי זה (יב בשמ"ע) ראוי לו לעמוד בדבורו אף על פי שלא לקח מהדמים כלום, ולא רשם ולא הניח משכון. וכל החוזר בו, בין לוקח בין מוכר, אע"פ שאינו חייב לקבל מי שפרע ה"ז ממחוסרי אמנה ואין רוח חכמים נוחה הימנו.

רמ"א

הגה: אף על פי שבדברים בלא מעות יכול לחזור בו וא"צ לקבל עליו מי שפרע, מ"מ ראוי לאדם לעמוד בדיבורו אע"פ שלא עשה שום קנין, רק דברים בעלמא, וכל החוזר בו, בין לוקח בין מוכר אין רוח חכמים נוחה הימנו. והני מילי בחד תרעא, אבל בתרי תרעי אין זה ממחוסרי אמנה. וכל האומר לתת לחבירו מתנה מועטת ולא נתנה לו, הרי זה ממחוסרי אמנה (הכל בטור). ועיין לקמן סימן רמ"ט. וי"א דאפילו בתרי תרעי אסור לחזור, ואם חזר בו יש בו משום מחוסר אמנה (נ"י פ' הזהב והמגיד פרק ו' דמכירה וב"י בשם תוספות ורבינו ירוחם נ"ט ח"ד), וכן נראה עיקר.

שמ"ע

יב: ראוי לו לעמוד בדיבורו דרז"ל אמרו מ"ש הין צדק שיהא הן שלך צדק ואפי' נתיקר השער ס"ל

להרמב"ם והמחבר דלא יחזור בו מ"ה כתבו סתמא אבל הרא"ש והטור ס"ל דאם חוזר בו המוכר משום יוקרא והלוקח משום זולא לית לן בה ע"ש ובד"מ.

Shulchan Aruch:

When one does business by verbal [commitments] only, it is fitting to honor one's word – even though one did not receive any money [yet], nor was [anything] signed], and nor was collateral given. Whoever reneges, either the buyer or the seller, even though he does not receive [the curse of Beis Din] “The One Who exacted retribution...,” nevertheless he is considered lacking in trustworthiness, and the spirit of the Sages is not pleased with him.

Remah:

Even though one is able to renege from a verbal [commitment] that did not [involve the transfer] of money, and one is not required to receive [the curse of Beis Din] “The One Who exacted retribution...,” nevertheless it is fitting for one to honor his commitments, even though no acquisition was made – only a verbal [commitment was made]. Whoever reneges, be it the buyer or seller, the spirit of the Sages is not pleased with him.

This ruling applies where there is one price [i.e. the price does not change after the commitment was made]. But in [a case where] there are two prices [i.e. the price changed after the time of the commitment], then [retracting] is not a lack of trustworthiness.”

Anyone who says he will give his fellow a small gift, and he did not give it to him – this is considered lacking in trustworthiness. See below in chap. 249.

Some say that even where there are two prices [i.e. the price changes “trei tari”], it is [still] prohibited to renege, and if one does renege it constitutes a lack in trustworthiness. This [latter opinion] seems to be the standard [Halacha].

S'mah:

[The S'mah comments on a phrase in the Shulchan Aruch:] *it is fitting to honor one's word* – for the Sages said: that which it is written “hin tzedek” [Vayikra 19:36, which is interpreted to mean:] that your “Yes” should be correct, [applies] even when the price increases. The Ramabam and Shulchan Aruch [also rule] that one may not renege. This is why they write [that one may not renege on verbal commitments] without any

qualification [i.e. implying that it applies in all cases, even where the price increases].

However, the Rosh and Tur rule that if the seller reneges due an increase [in price], or the buyer due to a decrease [in price] – then there is no [lack of trustworthiness in reneging]. See also the Darkei Moshe.

The Shulchan Aruch rules that reneging on a verbal commitment is considered a lack of trustworthiness and is improper. He does not state a leniency for a case where the price changed (Trei Tari), implying that his ruling follows the Ramban (Source D3) – that reneging after a price change is still considered a lack of trustworthiness. The Remah cites the ruling of the Ramban, and concludes that this is the Halacha.

The S'mah, however, seems to rule like the Ba'al HaMa'or – that reneging due to a price change is *not* considered a lack of trustworthiness. And indeed for the purposes of practical of Halacha, the Chasam Sofer follows this ruling (She'elos u'Teshuvos Chasam Sofer, Choshen Mishpat 102).

E. A COMMITMENT PHRASED AS A PROMISE

In the following sources from the Gemara and Rishonim we see the case of honoring a commitment phrased as a promise.

E1. A promise made to free a prisoner has more reliability than a verbal commitment.

משנה פסחים דף צ' סוף ע"ב וגמ'

Pesachim 90b (Mishnah and Gemara, at the end of the page)

מסני'. האונן והמפקח את הגל, וכן מי שהבטיחוהו להוציאו מבית האסורים, והחולה והזקן שהן יכולין לאכול כזית שוחטין עליהן. על כולם אין שוחטין עליהן בפני עצמן, שמא יביאו את הפסח לידי פסול. לפיכך, אם אירע בהן פסול פטורין מלעשות פסח שני, חוץ מן המפקח בגל שהוא טמא מתחלתו.

גמ'. אמר רבה בר הונא אמר רב יוחנן: לא שנו אלא בית האסורין דנכרים, אבל בית האסורין

דישראל שוחטין בפני עצמו, כיון דאבטחינהו מפיק ליה, דכתיב שארית ישראל לא יעשו עולה ולא ידברו כזב.

[This Mishnah gives the law for several individuals who, for one reason or another, may prove unable to partake of the Pesach offering:]

Mishnah: [Concerning] an Onein [a mourner after the death of any one of their seven closest relatives (father, mother, brother, unmarried sister, son, daughter, spouse) and before the burial] and one clearing a pile [of rubble from upon a person trapped in the collapse of a building], and also one whom they have promised to release from prison [by nightfall,] and a sick person and an old person who are able to consume an olive's volume [of meat]: We may slaughter [the Pesach offering] for them. [For although these people may prove unfit to partake of the offering when the time comes to eat it, since they are presently fit, they may bring the Pesach.]

[However,] in all these [cases] we do not slaughter [the Pesach] for them alone, lest they [indeed prove unfit to partake and thus] bring the Pesach offering to invalidation. [Rather, they may bring the Pesach only in partnership with others.]

[The Mishnah concludes:]

Therefore, [i.e. since they were fit at the moment the offering was slaughtered,] if a disqualification [then] does befall them [before eating the Pesach,] they are exempt from making the Pesach Sheini [i.e. the "Second Pesach" brought a month later by those who were ritually unclean or too far from Jerusalem, to offer the classic Pesach offering at its proper time], with the exception of one who is clearing a pile [of rubble, and discovers that the person beneath is dead.] For he is [presumed to have become] contaminated at the outset, [i.e. before the slaughter, he therefore did not fulfill his Pesach obligation and must bring the second Pesach to compensate].

Gemara: [The Gemara address the Mishnah's statement that we slaughter the Pesach for one promised release from prison only if others are also part of that Pesach:]

Rabbah bar Rav Huna said in the name of R' Yochanan: [The Rabbis] did not teach [this law] except [with regard to one held in] a prison of idolaters, [who cannot be trusted to keep their word.] But [if one is held] in a Jewish prison, we may slaughter [the Pesach] for him alone [for example, such

as one incarcerated by a Beis Din in an attempt to compel him pay a debt he owes if he has money but refuses to pay]. [For since the court] promised him [release], it will [surely] release him.

For it is written: “The remnant of Israel will not perform iniquity and will not speak lies.” [Tzechaniah 3:13. We see that the verse itself attests to the integrity of Jews. We thus may rely upon the court’s promise, and slaughter the Pesach for this prisoner.]

The case of the Gemara is where the prisoner is being held in custody by Beis Din (as explained by Rashi on the Gemara). The Beis Din promises him that he will be freed by the night of Pesach. Another person may rely on their promise and slaughter a Pesach offering for the prisoner’s sake alone on the afternoon before Pesach. There is no concern that the Beis Din will renege on its promise, and the Pesach offering will have to go to waste, since a Jewish person – “the remnant of Israel” in the expression of Tzechaniah – is guaranteed to honor his promise.

E2. A Promise Demands More

שערי תשובה לרבינו יונה שער ג', סי' קפ"ב וקפ"ג
Sha'arei Teshuvah 3:182-183

קפ"ב החלק החמישי האומר לחברו כי ייטיב עמו ויתן לו מתת, ועודנו מדבר עם לבבו ושיח שלא לתת, ונאמר (תהלים לד, יד): "נצור לשונך מרע ושפתך מדבר מרמה", ופירשו רבותינו זכרונם לברכה (בבא מציעא מט, א): שלא ידבר אחד בפה ואחד בלב, ועוד אמרו (ב"מ ירושלמי פרק ד, הלכה ב): דברים אין בהם משום מחוסרי אמנה אם יחזור מדבריו, ובלבד שיהא אומר בפה וגומר בדעת.

קפ"ג החלק הששי המבטיח את חברו להיטיב עמו וישקר דבריו וישים לאל מלתו, כי אחרי אשר אמר להיטיב עמו בלשון הבטחה ובטח בו לב חברו, אין לו לחלל הבטחתו, כי זה דרך שקר, והוא כאדם עבר ברית, שנאמר (צפניה ג, יג): "שארית ישראל לא יעשו עולה ולא ידברו כזב ולא ימצא בפייהם לשון תרמית". וכן האומר לתת לחברו מתנה מועטת אף על פי שלא הזכיר לשון הבטחה. ואמרו רבותינו (ב"מ מט): כי יש בו משום מחוסרי אמנה, כי לב חברו סומך עליו ובטח בו, אחרי שהמתנה מועטת, כי נתון יתן לו.

182: The fifth category [of prohibited falsehood is] one who tells his fellow that he will do some good for him or give him something – and while saying this, he has already decided in his heart not to give it. For the [verse] says, “Guard your tongue from evil, and your lips from speaking deceitfully” (Tehillim 34:14). Our Sages of blessed memory explain [this to mean] that one may not speak one way with his mouth, and [have] another [intention] in his heart (Bava Metzia 49a).

Furthermore, they have said (Bava Metzia, Talmud Yerushalmi 4:2) that it is not considered a lack of trustworthiness if one reneges on a verbal [commitment later, as in the case of a large gift]. However, when he says [the words with] his mouth, [at that time] he must resolve in his mind [to honor his word].

183: The sixth category [of prohibited falsehood is] one promises his fellow to do some good toward him, and makes his words false [by] considering his word as though it was nothing. For after he said he would do the good toward him in the context of a promise, and his fellow believes him – he is not to profane his promise. For that is the way of falsehood, and it is like one breaking a covenant. As the verse says, “The remnant of Israel will not perform iniquity and will not speak lies, and there will not be found in their mouths a deceitful tongue” (Tzephaniah 3:13).

Also, one who tells his fellow that he will give him some small gift, even if it is not said as a promise, [nevertheless] our Sages said that [reneging] would constitute a lack of trustworthiness (Bava Metzia 49a). For his fellow’s heart relies on him and believes him, since the gift is small, and it is expected that he will give it.

According to Rabbeinu Yona, the verse “The remnant of Israel will not perform iniquity” applies specifically to a commitment phrased as a promise, such as “I promise I will ...” or “I will not change my mind about doing ...”

Even if the gift or the favor is very large (Matanah Merubah as in Source A4) or there was an unexpected change of circumstance (Trei Tari as in Sources D1 – D5) the person is still required to fulfill his promise since the recipient expects him to do so – not to do so is considered a lack of trustworthiness. Further, the expression of a promise assumes that the giver thought about it carefully before promising.

F. A MENTAL COMMITMENT

In the Gemara we find a greater and more subtle level of integrity – honoring a commitment to someone else, made only in one’s thoughts unbeknownst to anyone else.

F1. Honoring a commitment made in one’s thoughts even though it is unbeknownst to anyone else.

מכות דף כ”ד ע”א ורש”י
Makkos 24a (Gemara and Rashi)

ודובר אמת בלבבו כגון רב ספרא.

רש”י

רב ספרא. בשאלתות דרב אחא (שאלתא לו) והכי הוה עובדא דרב ספרא היה לו חפץ אחד למכור וזא אדם אחד לפניו בשעה שהיה קורא ק”ש ואמר לו תן לי החפץ בכך וכך דמים ולא ענהו מפני שהיה קורא ק”ש כסבור זה שלא היה רוצה ליתנו בדמים הללו והוסיף אמר תנהו לי בכך יותר לאחר שסיים ק”ש אמר לו טול החפץ בדמים שאמרת בראשונה שבאותן דמים היה דעתי ליתנם לך.

“[Hashem, who may sojourn in Your Tent? Who may dwell on Your Holy Mountain?] ... One who speaks the truth from his heart” (Tehllim 15:2) – for example, Rav Safra.

Rashi:

Rav Safra – In the She’iltos of Rav Acha (She’iltos 36) [the following is related:] This was the incident [involving] Rav Safra: he had an object for sale, and a person came before him at the time he was reciting the Shema, and said to him, “Sell me the item for such and such money.” [Rav Safra] did not answer him because he was reciting the Shema. This [buyer] thought that [the reason he was not answering was because] he did not want to give it for that price. He continued and said, “Give it to me for this much more.”

Upon finishing the recitation of Shema, [Rav Safra] said to him, “Take the item for the price you had originally said, for I had already agreed in my mind to give it to you for that price.”

Rav Safra went beyond the letter of the law – he would honor a mental commitment to sell his wares at a low price, even though the buyer offered him a higher price!

F2. Rav Safra treated the mundane as if it were sacred.

מהרש"א מכות כ"ג ע"ב ד"ה דובר אמת
Maharsha to Makkos 23b

ואמרו דובר אמת זה רב ספרא. כתב המורדכי פרק קמא דקידושין דהיינו למעליותא דאף להדיוט היה מקיים מחשבתו כדין הקדש דקנה במחשבה כדכתיב כל נדיב לב והוא מבואר שהקדיש דבורו כאלו הם לשמים ועשה החול קודש וכענין זה אכלו החסידים חוליהן על טהרת הקדש והיא המתכונה שלמה שכל דיבורו ומאכלו יהיה קדש.

And [the Sages in the Gemara, Source F1] said, “One who speaks [the truth from his heart, Tehllim 15:2] – this is Rav Safra.” The Mordechai writes in the first chapter of Kiddushin that this is a lofty [level] – in that even for a human [literally a simple one] he would fulfill his intentions just like the law of [sanctifying something to be] Temple property, where [one’s mere] thought [to give give an object makes it be] acquired [by the Temple treasury]. As the verse says, “Everyone whose *heart* motivated him [to bring an offering to the Mishkan.” Shemos 35:22].

It is clear that he [Rav Safra] sanctified his word as though his words [were directed] to heaven. And he made the mundane [into something] holy. Similarly, the early pious ones would eat [even] their non-sanctified [food] on a level of purity [fitting for eating] sanctified [foods]. It is this that King Solomon had in mind [when he said] that all one’s words and food should be holy.

According to the Mordechai, the piousness of Rav Safra was to treat even mundane issues as though they were holy – much like those who would eat their non-sacrificial foods on a level of purity required for sacrificial foods.

Therefore, Rav Safra would honor a mental commitment regarding a sale, just like one is obligated to honor a mental commitment to give a donation to the Temple – whereby the Temple treasury acquires the item even though nothing was verbalized. For Rav Safra treated his thoughts as having the ability to change the Halachic status of an object.

DRAFT

G. SUMMARY

A. Reneging on the three levels of a sale commitment

There are three levels of commitment in a sale transaction:

1. Legal acquisition of the item being sold – the buyer draws it into his domain or lifts it in the air – neither party can renege (Bava Metzia, Source A1).
2. Payment for the item – either party can renege, but he incurs the curse of Beis Din (ibid.).
3. Verbal agreement regarding the sale –
 - a. According to R' Yochanan, to renege is considered a lack of trustworthiness (Mechusar Amanah) and it is improper to do so (unless the other party pardons you, or you pay them compensation, or they were never expecting the commitment to be fulfilled).
 - b. According to Rav, either party can renege (Bava Metzia, Source A2).

Abaye adds that it is a Torah prohibition to make a false commitment that one has no intention of honoring. This is known as “one [intention] in one’s mouth and another in one’s heart” and is based on the verse “hin tzedek” (Vayikra 19:36. The Sages read this verse as saying “hein tzedek,” “your ‘yes’ must be correct,” Bava Metzia, Source A3).

Regarding a verbal offer of a small gift (or favor, “matanah mu’etes”), R' Yochanan rules that it is considered a lack of trustworthiness to renege since the recipient was expecting to receive it and is now disappointed. However, if he was not expecting to receive it (as in the case of a large gift) it is not a lack of trustworthiness to renege (Bava Metzia, Source A4).

Regarding the practical Halacha, the Rif (Source A5) and Rosh (Source A6) rule that:

1. It is considered a lack of trustworthiness to renege on a commitment in the case of a sale or small gift (that the recipient expected to receive) (following R' Yochanan).
2. It is a Torah prohibition to make a false commitment that one has no intention of honoring. At the time of making the

commitment one must intend to fulfill it (Abaye's ruling in support of Rav).

B. The approach of Tosafos – a verbal commitment causes an acquisition to occur.

Tosafos explains that a verbal commitment causes the item to be acquired by the recipient (Source B1). As supporting evidence, Tosafos cites the case of the Yisrael who regularly commits Terumah produce to a particular Kohen. Even though the Kohen has not yet physically acquired it, the designated produce belongs to him Halachically (Gittin, Source B2; Tosafos, Source B3).

Following a verbal commitment, the giver still has the right to renege, since we only view the acquisition as effective from the time of the commitment if the giver does not renege (Kovetz Shiurim, Source B4). Nevertheless, it is considered a lack of trustworthiness.

Since, according to Tosafos the verbal commitment causes the item to be acquired, the concept of a lack of trustworthiness is *only* relevant to physical objects that can be acquired (like, "I will give you my pencil at school"), but not to commitments regarding non-physical things (like, "I will meet you at school"). Also, the recipient has to *hear* the commitment in order for the acquisition to occur.

Also, since renegeing causes another *person* a loss, it is considered a lacking in one's Bein Adam L'Chavero conduct to renege (as opposed to a lacking in one's Bein Adam L'Makom conduct).

C. The approach of Rashi – a verbal commitment obligates one to fulfill it.

Based on the verse "hin tzedek" (Vayikra 19:36 in Source A3) one has a Torah obligation to fulfill a verbal commitment if the recipient is expecting you to do so (as in the case of a small gift) (Rashi, Source C1; Rambam, Source C2). This obligation applies to commitments of both physical and non-physical items. Not fulfilling a commitment is considered a lack of trustworthiness, and is primarily lack in one's Bein Adam L'Makom conduct. (It is also a lacking in one's Bein Adam L'Chavero conduct since the other person is disappointed, even though he has no real claim to the item since he never acquired it.)

For the purposes of practical Halacha, modern day Poskim (Halachic authorities) are split between Rashi and Tosafos. Most Poskim, however, tend to rule like Tosafos (Igros Moshe Yoreh De'ah 1:147, sec. 2) even though there is supporting evidence for Rashi (Remah, Yoreh De'ah 264:1).

According to others, the Mitzvah to “Distance yourself from falsehood” (Shemos 23:7) also obligates one to fulfill one’s verbal commitments (Sefer HaChinuch, Source C3).

It is prohibited to renege on commitments to children, since it teaches them to lie (Succah, Source C4). Further, unlike adults, they expect the commitment to be fulfilled even if it is for a large gift (Matanah Merubah).

D. A change of circumstances after a verbal commitment (Trei Tari)

It is a debate among the Rishonim and Achronim whether it is also considered a lack of trustworthiness to renege due to an unexpected change in price (“trei tari,” literally two prices) or circumstances that are beyond your control or that you could not have known about at the time of the commitment. The two approaches are:

1. It is not considered a lack of trustworthiness to renege due to an unexpected change in circumstances or price (Ba'al HaMa'or, Source D1; Rosh, Source D2; S'mah, Source D5).
2. It is considered a lack of trustworthiness to renege due to an unexpected change in circumstances or price (Ramban, Source D3; Rashi and Tosafos, Source D4; Remah, Source D5).

For the purposes of practical of Halacha, the Chasam Sofer is lenient and rules like the S'mah.

The following table is a summary of common situations in which renegeing from a verbal commitment is not considered a lack of trustworthiness:

	Tosafos	Rashi
Matanah Merubah	One is permitted to renege since the recipient was not expecting to receive the item, so there was no acquisition.	One is permitted to renege since your commitment never had any real weight, so there is no need to fulfill it.
Commitment of a non-physical item	One is permitted to renege, since there was never any acquisition by the verbal commitment (a Kinyan Dibbur cannot be effective on something that does not exist physically).	Reneging is considered a lack of trustworthiness.
The intended recipient did not hear the verbal commitment.	One is permitted to renege since the recipient did not participate in the Kinyan Dibbur.	If the commitment was merely intended as a discussion of an idea, then reneging is not considered a lack of trustworthiness. But if one meant to obligate oneself, then one cannot renege.
Trei Tari – one is permitted to renege (according to the S'mah).	One is permitted to renege because just as one can retract in a case of Trei Tari even after a <i>payment</i> was made (Kinyan Kesafim), all the more so is one permitted to renege after a mere verbal commitment (Kinyan Dibbur).	One is permitted to renege because you did not mean to commit to the sale or gift under these new, unexpected conditions.

E. A commitment phrased as a promise

If the verbal commitment is phrased as a promise (“I promise I will ...” or “I will not change my mind about doing ...”) then we do not expect the benefactor to renege (Pesachim, Source E1; Sha’arei Teshuvah, Source E2).

Even if the gift or the favor is very large (Matanah Merubah as in Source A4) or there was an unexpected change of circumstances (Trei Tari as in Sources D1–D5) he is still required to fulfill his promise since the recipient expects him to do so – not doing so is considered a lack of trustworthiness. Further, the expression of a promise assumes that the giver thought about it carefully before promising.

F. A mental commitment

It would be considered an act of piety to exert oneself to honor a mental commitment as Rav Safra did (Makkos, Source F1; Maharsha, Source F2).

H. PRACTICAL QUESTIONS AND SUGGESTED ANSWERS

Note to the reader: The aim of this work is to give the reader an introduction to the Torah guidelines to interpersonal relationships. As always, to gain a practical ruling (P'sak) for a given case, an Orthodox Rabbi or Posek should be consulted.

QUESTION 1: You are walking with your wife past a toy store. You see a toy, and exclaim: "I'm definitely going to buy that toy for our daughter's birthday!" Must you now buy that toy?

According to Rashi (Source C1), one has a Torah obligation to honor a verbal commitment (from the verse "hin tzedek," see Source A3). Reneging would be considered lacking in trustworthiness (Mechusar Amanah).

According to Tosafos (Sources 7 - 9), the verbal commitment causes the item to be acquired by the recipient (this is known as a Kinyan Dibbur, literally a verbal acquisition). In this case, the recipient (the daughter) never heard the commitment, so there was no acquisition, so it is permissible to renege.

QUESTION 2: You bump into an old school friend. After chatting for a while, you instinctively say: "I'll call you next week so we can get together and catch up!" Do you have to call him?

According to Rashi (Source C1), one has a Torah obligation to honor a verbal commitment and renegeing would be considered a lack in trustworthiness (Mechusar Amanah).

According to Tosafos (Sources B1 – B3), a verbal commitment causes the item to be acquired by the recipient (this is known as a Kinyan Dibbur, literally a verbal acquisition). Since this is a commitment for a non-physical item that cannot be Halachically acquired (a phone conversation and meeting), it would be permissible to renege.

QUESTION 3: You write your details on a signup sheet for people interested in buying a book. Later, you doubt whether you really want the book. Can you cross out your name?

If the seller saw you sign the sheet, then it is like you verbalized a commitment for the purchase. Retracting would be considered a lack of trustworthiness (Mechusar Amanah) unless there was a change of circumstances outside your control (Trei Tari, which there was not), or he pardoned you, or you paid him compensation.

If the seller did not see you sign the sheet, then it is not even considered like a verbalized commitment, and you can cross your name off and it is not considered a lack of trustworthiness. However it would be lack in the most subtle level of integrity – honoring a commitment to someone else, made only in one's thoughts unbeknown to anyone else (Source F1 and F2).

What if you received the same book as a gift after you had signed up?

This is considered a case of Trei Tari (an unexpected change of circumstances) and you could cross your name off.

QUESTION 4: A certain pre-school only accepts 20 children. You make a verbal commitment that you will send your child to that pre-school. Later, you decide to move houses and you want to send your child to a different pre-school. Can you renege?

If at the time of committing you could not have known that you would be moving houses, then this is a case of Trei Tari and you can renege.

QUESTION 5: You make a verbal commitment that you will send your child that certain pre-school. After you commit, you find out about another new, more preferable pre-school that only opened *after* you committed to the first one. Can you renege?

If the pre-school is a new development, and offers you an objective benefit (for example, its hours suit you better; it has a better teacher)

then it is a case of Trei Tari and you can renege. If there's no objective benefit, then it is not considered Trei Tari (since, effectively, there is no change in circumstances) and renegeing would be considered a lack of trustworthiness.

What if you just found out about a pre-existing pre-school after committing?

This is not considered an unexpected change in circumstance. Rather you should have done more research and been more thoughtful before committing. Renegeing would be considered a lack of trustworthiness.

What if you committed in the form of a promise, and now you decide to move houses and you want to send your child to a different pre-school. Can you renege?

If your commitment was understood as a promise, then renegeing would be considered a lack of trustworthiness, even in a case of Trei Tari (for example, moving neighborhoods unexpectedly, or the opening of new pre-school that you could not have know about).

QUESTION 6: Your unmarried son is studying in Yeshivah. You tell him you will give him \$500 per month. Can you renege?

If your son was expecting to receive the money, then this is considered a Matanah Mu'etes (a small gift) and renegeing would be considered a lack of trustworthiness.

If your son was never expecting to receive the money, then this is considered a Matanah Merubah (a large gift) and you could renege.

However, your son may have the status of an Ani (poor person). If so, then the potential gift is considered Tzedakah, and the offer has the status similar to that of a vow. Therefore it would be absolutely prohibited to renege (Shulchan Aruch, Yoreh De'ah 257:4).

QUESTION 7: Your three-year old son is learning not to hit his baby sister. You tell him you will give him \$500 if he is successful by his fourth birthday – which he is. Can you renege?

It is prohibited to renege since you would be teaching him to lie (Succah, Source C4). Further, there is no distinction between a Matanah Merubah and a Matanah Mu'etes for a child, since it is the nature of a child to rely on you and expect to receive both.

QUESTION 8: Reuven is wealthy, and offers to give Shimon \$100 to help cover the cost of a new set of Sefarim (works of Torah). Being wealthy, Reuven thinks this is a small gift. Being of average means, Shimon thinks this is a substantial sum of money, and doesn't fully expect to receive the money. Does Reuven have to keep his word?

According to Rashi (Source C1), one has a Torah obligation to honor a verbal commitment and renegeing would be considered a lack in trustworthiness (Mechusar Amanah). Since Reuven was serious about his offer, renegeing would be considered a lack of trustworthiness, and it does not matter that Shimon did not take him seriously.

According to Tosafos (Source B1), a verbal commitment causes the item to be acquired by the recipient if he was expecting to receive it. (This is known as a Kinyan Dibbur, literally a verbal acquisition). Since Shimon was not expecting to receive it, there is no Kinyan Dibbur, and therefore Reuven can renege.

What if Shimon is poor and not financially secure, and therefore unable to buy the Sefarim without help?

If the Sefarim are necessary to Shimon and something that he is accustomed to normally having when he is more financially secure (in Hebrew, "dei mechsoro"), then the gift is considered Tzedakah, and the offer has the status similar to that of a vow. Therefore it is absolutely prohibited to retract it (Shulchan Aruch, Yoreh De'ah 257:4).

QUESTION 9: Reuven has a reputation of not fulfilling his word. He makes a verbal commitment to take out the trash. Can he renege?

Since no one is expecting him to honor this commitment, no one relies on him (all his commitments have the status of a Matanah Merubah) and he is permitted to renege.

However, he has the general status of being Mechusar Amanah (lacking in trustworthiness) and the Sages are displeased with him (Rambam, C2). He has a Mitzvah to improve his reputation by keeping his word and taking out the trash in this case.

CHAPTER 4

גניבת דעת

Taking Credit Where None is Due

Introduction

In general, the Torah requires one to be straightforward and honest in all one's dealings and to avoid misleading people for one's own benefit.

But what about the following ambiguous areas:

- Can you persistently invite someone to eat with you, knowing that they will turn down the offer and instead feel compelled to invite you in return, or do some other favor for your gesture?
- What should you do if somebody wants to thank you for a favor that you never did for them? For example, your spouse thanks you for taking out the garbage, when in truth one of your children did it?
- Can you open up a new bottle of whiskey for a guest, when in truth you were going to open it in any case to finish it before Pesach (one cannot own whiskey during Pesach)?

All these questions pertain to the prohibition against Geneivas Da'as (which will be defined in Source A1 below).

This chapter is divided into the following parts:

- A. The definition and source of the prohibition of Geneivas Da'as
- B. A person misleading himself is not Geneivas Da'as
- C. If you would have done the gesture in any case it is not Geneivas Da'as
- D. Courteous behavior is not Geneivas Da'as
- E. Summary
- F. Practical questions and suggested answers

A. THE DEFINITION AND SOURCE OF THE PROHIBITION OF GENEIVAS DA'AS

A1. Examples of Geneivas Da'as – Rashi Implies That it Is a Rabbinic Prohibition

חולין דף צ"ג ע"ב - צ"ד ע"א
Chullin 93b-94a (Gemara)

מתני'. שולח אדם ירך לעובד כוכבים שגיד הנשה בתוכה, מפני שמקומו ניכר.

גמ'. שלמה אין, חתוכה לא... ואי בעית אימא: משום דקא גניב ליה לדעתיה, דאמר שמואל: אסור לגנוב דעת הבריות, ואפילו דעתו של עובד כוכבים; והא דשמואל, לאו בפירוש איתמר אלא מכללא איתמר, דשמואל הוה קא עבר במברא, א"ל לשמעיה: פייסיה למבוריה, פייסיה ואיקפד. מ"ט איקפד? אמר אביי: תרנגולת טרפה הואי, ויהבה ניהליה במור דשחוטה, רבא אמר: אנפקא אמר ליה לאשקויי, ואשקויה חמרא מזיגא. וכי מכללא מאי? למ"ד טרפה הואי, א"ל: אמאי תשהא איסורא? למ"ד אנפקא א"ל לאשקויי, אנפקא חייא משמע. תניא, היה ר' מאיר אומר: אל יסרהב אדם לחבירו לסעוד אצלו ויודע בו שאינו סועד, ולא ירבה לו בתקרובת ויודע בו שאינו מקבל, ולא יפתח לו חביות המכורות לחנוניי אא"כ הודיעו, ולא יאמר לו סוך שמן מפך ריקן, ואם בשביל כבודו מותר. איני, והא עולא איקלע לבי רב יהודה, פתח לו חביות המכורות לחנוניי! אודועי אודעיה, ואיבעית אימא: שאני עולא דחביב ליה לרב יהודה, דבלאו הכי נמי פתוחי מפתח ליה. ת"ר לא ילך אדם לבית האבל ובידו לגין המתקשקש, ולא ימלאנו מים מפני שמתעהו, ואם יש שם חבר עיר מותר. ת"ר: לא ימכור אדם לחבירו סנדל של מתה בכלל של חיה שחוטה, מפני ב' דברים; א' מפני שמתעהו, וא' מפני הסכנה; ולא ישגר אדם לחבירו חבית של יין ושמן צף על פיה, ומעשה באחד ששיגר לחבירו חבית של יין ושמן צף על פיה, והלך וזימן עליה אורחין ונכנסו, מצאה שהיא של יין וחנק את עצמו.

רש"י

גמ' ירך. שלמה משמע:

חתוכה לא. אלא אם כן ניטל גידה רכין דחתוכה היא סבר הלוקחה מן העובד כוכבים שניטל גידה ואוכלה בגידה:

משום דגונב דעתו. דעובד כוכבים כסבור שישראל זה אהבו מאד שתקנה וטרח צה ליטול גידה עד שנראית לעלמו ואח"כ נתנה לו והוא לא נטלו ונמלא מחזיק לו טובה חנם: מותר. דגדול כבוד הבריות:

Mishna:

A person may send a thigh to an idolater with the Gid Hanasheh inside it, because its place is discernible [and a Jew will see that it was not removed, so that if he were to buy it from him, he would remove it before eating it].

Gemara:

[The use of the words “a thigh” implies that only] a whole [thigh may be sent to an idolater without removing the Gid Hanasheh], but a cut-up one may not [send without removing the Gid Hanasheh]...

[The Gemara suggests two explanations for this ruling, and now suggests an alternative:]

If you prefer, say [that the reason that the Mishnah prohibits sending a cut-up thigh to an idolater without removing the Gid Hanasheh is not out of concern that a Jew might buy it from him and assume that the Gid Hanasheh was removed, but rather] because [the Jew] is “stealing his mind” [i.e. he is misleading the idolater, which is prohibited. For when the idolater received a butchered thigh, he assumes that the Jew is displaying exceptional friendship in that he took the trouble to painstakingly remove the Gid Hanasheh and present him with a gift fit for the Jew himself – Rashi.]

For Shmuel said: “It is forbidden to ‘steal the minds’ of people, including the mind of an idolater.”

[The Gemara notes:]

However, this [ruling] of Shmuel was not stated explicitly, rather, it was derived by inference [from an incident involving Shmuel]. For Shmuel was crossing [a river] in a ferry, [and] he said to his attendant, “Pay the [non-Jewish] ferry operator.” [The attendant] compensated him, and [Shmuel] was upset.

[Gemara examines the incident:]

What is the reason that he was upset? Abaye said: [Because] it was a Treifa hen [that he gave him]; and he gave it to him instead of a properly slaughtered hen. Rava said: [Shmuel] told [his attendant] to give him *anpek* [the name of a vessel which holds about 100 ml of wine] to drink, and he gave him diluted wine [under the false pretext that it was pure wine. Since Shmuel expressed his displeasure in his attendant’s deceptive act, it is evident that he holds that it is unlawful to mislead any person.]

[Now, since the Gemara found it necessary to point out that Shmuel did not explicitly spell out this prohibition, but that it was merely inferred from an incident, apparently the Gemara is not totally convinced about the validity of this inference. The Gemara thus asks:] And what if [this ruling is known only] through inference?

[The Gemara shows the weakness of the inference:]

According to the one who said [that Shmuel was upset because the hen] was a *tereifah* (i.e. Abaye), one could say that Shmuel, in showing his displeasure with his attendant's behavior] was saying to him, "Why do you retain forbidden foods [in your possession]?" [And] according to the one who said that [Shmuel] told [his attendant] to give him an *anpek* to drink [i.e. Rava, one could say that Shmuel was upset at his attendant for disobeying him, for] *anpek* connotes pure [wine].

[The Gemara cites a Baraisa regarding the prohibition against "stealing one's mind," or Geneivas Da'as:]

It was taught in a Baraisa: R Meir used to say: A person should not urge his fellow to eat with him, when he knows that he will not [accept the invitation to] eat [with him].

Nor should one make numerous offerings of gifts, when he knows that he does not accept [gifts].

Nor should he open for him barrels [of wine] that have been sold to a shopkeeper, unless he notifies him [that they were sold. In Mishnaic period, wine was stored in sealed barrels, and it was customary to honor a distinguished guest by unsealing a new barrel and offering him fresh strong wine. Generally, this would result in a significant loss for the host, for the barrel would remain partially empty, and the wine would begin to sour. If however, the host had already arranged that contents of the barrel be sold to a shopkeeper, the unsealing of the barrel would result in no loss, since he will immediately afterwards give the wine to the shopkeeper].

Nor should he say to him, "Anoint [yourself with] oil," [when he is actually offering] from an empty flask. However, [if he does so] for his honor [i.e. when his intent is to indicate to others his fondness for his guest], it is permitted.

[The Gemara questions the prohibition of opening barrels that were sold to the shopkeeper:] Is this [indeed] so? Why, Ulla visited the house of Rav Yehudah, and [Rav Yehudah] opened for him barrels that were sold to a shopkeeper!

[The Gemara answers: Rav Yehudah] notified [Ulla that they were indeed sold]. Of if you prefer, I can say that Ulla was different, for he was [so] dear to Rav Yehudah, that even without that [i.e. even if the barrels had not been sold to a shopkeeper], he would have opened them for him.

[The Gemara cites another Baraisa that discusses the prohibition against “stealing one’s mind”:]

The Rabbis taught in a Baraisa: A person may not go to the house of mourning and [hold] in his hand a flask [of wine] that splashes [i.e. that is partially empty], nor should he fill it with water, for [in both of these cases] he deceives him [i.e. the mourner who believes that the flask that he is being offered is actually full of wine]. However, if there is a crowd of townspeople there, [and he does so to enhance the mourner’s prestige in their eyes] it is permitted. [For the value of human dignity is so great that it supersedes certain prohibitions, such as the prohibition against Geneivas Da’as – Rashi].

[The Gemara cites another Baraisa:]

The Rabbis taught in a Baraisa: A person should not sell to his fellow a sandal [made from the leather] of an animal that died [on its own], under the pretense [that it was made from leather] of a live animal [that was slaughtered [which is of higher quality], for two reasons. One [reason is] because he deceives him, and the other is because of the danger [involved. For perhaps the animal died from the bite of a venomous snake, and that venom is still in the hide, and may end up being absorbed into the wearer’s foot].

[Another restriction:]

And a person should not send to his fellow a barrel of wine with oil floating on top [for the recipient will assume that the entire barrel is filled with oil].

[The Baraisa cites a tragic incident that occurred when this precaution was not heeded:]

And there was an incident involving someone who sent his fellow a barrel of wine with oil floating on top, and he went and invited guests [to a feast], relying on [the oil that he assumed] it [contained] and the guests entered [to the feast]. He [then] found the barrel to be of wine [rather than of oil] and [he was so embarrassed about not having what to feed them, that] he strangled himself.

Based on the cases given in the Gemara, Geneivas Da'as (literally “stealing of the mind”) can be defined as: misleading somebody with

1. an *insincere* favor, gift, gesture of kindness or honor, or
2. a *sincere* gesture, but one that *appears* to entail more effort or expense than it actually is, which will result in the recipient feeling that he is indebted to you, or owes you something.

The Gemara lists a number of cases of Geneivas Da'as:

1. It is prohibited to persistently invite someone for a meal when you know they will not accept the offer.
2. It is prohibited to persistently offer someone a gift that you know they will not accept.
3. It is prohibited to appear to honor a guest by opening a fresh barrel of wine for him, when in truth it had to be opened in any case for an unrelated reason.
4. It is prohibited to offer someone the use of a flask of oil which is really empty and you know they would not use the oil you are pretending to offer.
5. It is prohibited to take a half-empty flask of wine to the house of a mourner, or to fill it with water instead of wine, since he will think you are honoring him by bringing wine. (In Talmudic times it was customary to bring wine to the mourner as a gift of condolence, see Kesubos 8b.)
6. It is prohibited to sell a sandal made of weak leather from an animal that died on its own, if the buyer thinks that it's strong leather that came from a healthy animal.
7. It is prohibited to send a barrel that appears to contain oil, when in truth it really contains wine and only has a thin layer of oil floating on top.

The Gemara also lists one possible case of Geneivas Da'as involving a non-Jew: according to Shmuel, it is prohibited to sell to a non-Jew a cut up animal thigh still containing the Gid Hanasheh (a nerve in the meat of the thigh that is forbidden to be eaten, see Bereishis 32:33). This is because the non-Jewish buyer thinks that the Jewish seller has gone to much trouble to remove the Gid Hanasheh as a favor to him. (However,

the Gemara notes that Shmuel did not explicitly state this case of Geneivas Da'as, rather it was only inferred from an incident involving Shmuel. This casts doubt on whether the prohibition against Geneivas Da'as really applies to a non-Jew.)

Regarding the practical Halacha, it will be seen in the following sources that it is a matter of debate among the Rishonim (early Halachic authorities, c. 1000 CE – 1500 CE) and Achronim (later Halachic authorities, c. 1500 CE to the present) whether Geneivas Da'as is a Torah prohibition or Rabbinic prohibition.

A2. Geneivas Da'as is a Torah prohibition against deceiving both Jews and non-Jews, and is included in the prohibition against stealing.

חידושי הריטב"א חולין דף צ"ד ע"א
Chidushei HaRitvah ibid.

ואיסור גניבת דעתו של נכרי כתבו קצת רבותינו בשם בעלי התוספות ז"ל שהוא איסור תורה דנפקא לן מדכתיב לא תגנבו ולא תכחשו וגו', וכי כתיב בסיפא דקרא איש בעמיתו דממעט גוי, ההיא [א] דלא תכחשו ולא תשקרו קאי, ובמקום שאין חילול השם בדבר, ודיקא נמי דלא כתיב מעמיתו או לעמיתו, והיינו נמי דיהבינן אנחתא בלא תגנבו, ואע"ג דלא אשכחן גניבה סתם על גניבת דעת אלא לשון גניבת לב, בכאן נכתב לא תגנבו סתם לכלול אף גניבת ממוון, ובתוספתא דבבא קמא (פ"ז ה"ג עיי"ש) איתא שלשה גנבים הם גדול שבכולם גונב דעת הבריות.

[Background: the Torah's prohibition against stealing appears in the following verse which has three parts: "(1) Do not steal; (2) do not deny falsely; (3) do not lie (in Beis Din) – each man his fellow" (Vayikra 19:11). The Ritvah explains that the qualifying phrase "each man his fellow" only refers back to parts (2) and (3) of the verse.]

Some of our sages explain, in the name of the Ba'alei Tosafos, that the prohibition to "steal the mind" [Geneivas Da'as] of a non-Jew is a Torah prohibition, for it is derived from the verse, "Do not steal; do not deny falsely; [do not lie - each man his fellow]" (Vayikra 19:11).

Now although the end of the verse reads “each man his *fellow*,” which excludes [from the prohibition a case where the victim is a] non-Jew, that is specifically qualifying the *latter* part of the verse i.e. “do not deny falsely; do not lie,” [implying that these are permitted against a non-Jew] assuming no Chillul Hashem [desecration of G-d’s honor] is involved.

[As further evidence that the qualifying words ‘each man his fellow’ is *not* qualifying the first phrase of the verse, “Do not steal,” and therefore it is still prohibited to steal from a non-Jew] it does *not* say “each man *from* his fellow” or “each man *to* his fellow” [which would be the correct word choice to qualify stealing. But rather the verse simply says, “each man his fellow”]. Further, there is an Esnachta [cantillation mark indicating a pause in a verse, separating the first half from the second] under the words “Do not steal.”

Now, although normally we do not find the word “steal” referring to Geneivas Da’as unless it is qualified as such, for example “stealing the heart,” [that is nevertheless not evidence that the verse does not refer to Geneivas Da’as, for] here it was written unqualified so as to be broad enough to include stealing of money as well. [As a further support:] the Tosefta in Bava Kama [7:3] says that there are three types of people who steal, and the worst of them all is one who “steals the minds of people.”

According to the Ritvah, the prohibition against Geneivas Da’as originates in the general Torah prohibition against stealing (“Do not steal,” Vayikra 19:11).

He rules that the Torah prohibition of Geneivas Da’as applies whether the victim is Jewish or non-Jewish. His reasoning is as follows: The Ritvah explains that the phrase in the verse “each man his fellow” qualifies the prohibitions against denying falsely and swearing falsely. This implies that these prohibitions only apply when the victim is Jewish (i.e. “one’s *fellow*”), but not when the victim is non-Jewish (assuming it will not result in a desecration of the honor accorded to G-d [Chillul HaShem]). However, the prohibition against stealing, is *not* qualified by the phrase “to one fellow,” and is therefore prohibited *even* when the victim is non-Jewish.

A3. Geneivas Da'as is a Torah prohibition against deceiving both Jews and non-Jews, and is included in the prohibition against stealing.

סמ"ג ל"ת קנ"ה

Sefer HaMitzvos HaGadol, Negative Mitzvah no. 155 "Do not steal"

בפרשת קדושים כתוב לא תגנובו ...

ותניא בתוספתא דבבא קמא (פ"ז הל' ג) שלשה גנבים הם הראשון שבכולם גונב דעת הבריות מרבה לו בתקרובת וידע שאינו מקבלו ומסרב בו לאכלא וידע בו שאינו אוכל ... גרסינן בפרק גיד הנשה (חולין צד, א) אמר שמואל אסור לגנוב דעת הבריות ואפילו דעת הגוים.

In Parshas Kedoshim it is written, "Do not steal"... and it was taught in a Tosefta in Bava Kama (Chap. 7, Halacha 3): "There are three thieves. The foremost [the worst] of them all is one who 'steals the minds of people' – [such as] one who attempts to send gifts knowing that the recipient will not accept [but feel obligated to reciprocate], or pushing one to eat [as an invited guest] when you know that he will not eat" ...

The Gemara in chapter Gid Hanasheh (Chullin 94a) [relates the following statement:] Shmuel said: "It is forbidden to 'steal the minds' of people – even that of gentiles."

The Sefer HaMitzvos HaGadol (S'mag) also rules that Geneivas Da'as is a Torah prohibition, originating in the verse "Do not steal" (Vayikra 19:11).

The next source explains why Geneivas Da'as is a sub-set of the prohibition against stealing.

A4. *Secretly stealing money or a person's good will corrupts one's character, and is prohibited by "Do not steal."*

מנחת חינוך מצוה רכ"ד ד"ה או הגונב ממון עובד עבודה זרה
Minchas Chinuch, Mitzvah no. 224 "Do not steal"

אך נראה לי לכאורה דאף להסוברים גזילת גוי דרבנן מ"מ גניבת גוי אפשר דמן התורה אסור, להסוברים דאף על מנת למיקט [לעיל אות א'] ואף שלו [לעיל אות ב'] אסור לגנוב מן התורה, מזה נראה דהתורה לא אסרה זה מדין ממון לבד רק המדה הגרועה הזאת בעצמה התורה אסרה, א"כ בשלמא גזל שהוא רק דהתורה אסרה ממון חבירו א"כ אפשר דשל גוי לא אסרה כי הממון שלו הפקר לאותן שיטות, אבל גניבה דאף שלו אסור לגנוב כדי שלא ילמוד מדה הגרועה הזאת, א"כ אף מגוי אסור כדי שלא ירגיל בזה ועל זה הקפידה התורה.

It appears to me, that even those who rule that *robbing* from a non-Jew [theft in the open or by force] is only Rabbinically prohibited, would nevertheless rule that *stealing* from a non-Jew [theft done secretly], may indeed be a Torah prohibition.

[This more stringent ruling for the case of stealing secretly from a non-Jew is based on the fact that] they rule that stealing only as a means to upset someone, is a Torah prohibition [even if you plan to return the item, such as in the case of a practical joke]; and stealing back property that really belongs to you is a Torah prohibition. From these cases it is clear that the reason the Torah prohibits stealing is not simply because of [a concern for other people's] property [because in the cases above, the rightful owner maintains his property, and yet they are still prohibited], but is rather because the Torah is prohibiting the despicable character trait itself that is associated with stealing in secret.

We may then conclude, that regarding robbery – wherein the Torah is concerned about the proprietary rights of the other fellow – it is possible to say that robbing a non-Jew entails no Torah prohibition since his property, according to those opinions, is considered ownerless. But in the case of stealing – where even stealing back one's own item is prohibited, because of the despicable character trait itself that is associated with stealing in secret – if so, then even stealing from a non-Jew is prohibited, so that one does not become habituated in such behavior – and it is with regard to this [habituation] that the Torah was ultimately concerned.

According to the Minchas Chinuch, when one engages in theft (Geneivah, i.e. secretly stealing another's property) he is doing two basic wrongs:

1. He is taking money that is not his, which is really included in the prohibition of Gezailah (robbery, taking money openly even by force).
2. He is corrupting his own character and personal integrity by behaving in an underhanded and malicious way. The Minchas Chinuch goes so far as to propose that even according to those who say that robbing openly from non-Jews (Gezel Nochri) is permitted, will agree that stealing secretly from non-Jews (Geneivas Nochri) is prohibited due to the corruption caused to one's character that ensues from such behavior.

Based on this reasoning of the Minchas Chinuch, the opinions of the Ritva (Source A2) and S'mag (Source A3) – that Geneivas Da'as is included in the Torah prohibition of “Do not steal” – become clearer. For with respect to the corruption of one's character, there is no difference whether it is money that is being stolen or a person's regard for you. In the eyes of the Torah, manipulative and underhanded behavior is despicable no matter what “goods” are thereby attained. The Torah requires us to be straightforward and honest in all our dealings and to avoid misrepresenting our true motives.

A5. Geneivas Da'as is a Rabbinic prohibition against deceiving both Jews and non-Jews.

ספר מצוות קטן מצוה רס"ב

Sefer HaMitzvos HaKatan, Mitzvah no. 262 “Do not steal”

שלא לגנוב ממוון דכתיב (ויקרא י"ט) לא תגנובו... ויש גניבה אחרת שאסרו חכמים כגון גניבת הדעת
אסור ואפילו דעתו של עכו"ם אסור

[Mitzvah number 262:] To not steal [another's] possessions, as it is written “Do not steal” (Vayikra 19:11). ...

There is another form of stealing which the Sages prohibited – namely, Geneivas Da'as. And even the Geneivas Da'as of a non-Jew is prohibited [by the Sages].

According to the S'mak, Geneivas Da'as is a Rabbinic prohibition.

A6. Geneivas Da'as that causes a monetary loss is a Torah prohibition; if it doesn't cause a loss it is a Rabbinic prohibition.

שו"ע הרב הלכות אונאה וגניבת דעת סי"א, י"ב

Shulchan Aruch HaRav, Hilchos Ona'ah v'Geneivas Da'as 11, 12

יא אסור להטעות לנכרי וכן כל מרמה שבעולם אסורה במו"מ אפילו לנכרי כגון אם יש מום במקחו צריך להודיע ללוקח אע"פ שהוא נכרי שהרי זה מטעהו וגונב דעתו אם אינו מודיעו וה"ז כגונב ממנו ממון ואסור מן התורה כמו שית' בה' גולה:

יב ואפי' לגנוב דעתו בדבר שלא יגיע לו הפסד להנכרי אסור מד"ס כגון למכור לו בשר נבילה בחזקת שחוטה ואף לגנוב דעת הבריות בדברים אפי' במלה אחת של שפת חלקות או גניבת דעת או במעשה שמראה שעושה בשבילן ואינו עושה אסור מפני שמחזיקים לו טובה בחנם:

11. It is prohibited to mislead a non-Jew. Similarly, all forms of deceit in business are prohibited, even toward a non-Jew. For example, if there is a defect in merchandise, one is required to inform the buyer – even though he is a non-Jew. [For by not informing him,] you are deceiving him and 'stealing' his Da'as. This is the equivalent of stealing his possessions, which is a Torah prohibition, as will be explained in the laws of robbery.

12. Even to engage in Geneivas Da'as where the non-Jew will not suffer a [monetary] loss is prohibited by the Sages. An example [of such Geneivas Da'as would be] to sell the meat of carrion [which is not Kosher] as though it was ritually slaughtered.

Furthermore, it is prohibited:

- [1.] to engage in Geneivas Da'as with words alone [without any actions],
- [2.] even with one conniving or deceptive word, or
- [3.] to appear to do an action which appears to be for the benefit of the recipient, but one really does not do anything.

These are prohibited since [the victim] now unjustly feels that he owes you something [when in truth you never did anything for him].

In deciding the practical Halacha, Rabbi Shneur Zalman of Liadi (author of the Shulchan Aruch HaRav) differentiates between two types of Geneivas Da'as:

1. Geneivas Da'as that causes a monetary loss to the victim is a Torah prohibition, and is part of the prohibition of "Do not steal." An example would be misleading a buyer by not informing him of a defect in the item he is buying. This prohibition applies whether the victim is Jewish or non-Jewish.
2. Geneivas Da'as that does not cause a monetary loss to the victim is a Rabbinic prohibition. Even if one misleads someone with just one word, or one gesture that appears like one is doing it especially for the recipient, it is Geneivas Da'as. This prohibition also applies whether the victim is Jewish or non-Jewish.

(All the Rishonim presented above understand that the prohibition against Geneivas Daas is rooted in the Torah prohibition "Do not steal" (Vayikra 19:11). In contrast, it should be noted that other Rishonim understand it to be rooted in the Mitzvah to "Distance yourself from falsehood" (Shemos 23:7), since Geneivas Da'as is a form of deception and falsehood (Rambam, Mishneh Torah, Hilchos De'os, 2:6; Sha'arei Teshuvah 3:184)).

B. A PERSON MISLEADING HIMSELF IS NOT GENEIVAS DA'AS

The prohibition against Geneivas Da'as and misleading another person is not violated if it can be said that the "victim" misled himself.

But at what point does the Halacha say that the other person is misleading himself into thinking that a favor is being done for him, and that therefore one is not guilty of misleading him?

The following sources deal with this question.

B1. The person is misleading himself if nothing explicitly deceptive was stated.

חולין דף צ"ד ע"ב ורש"י
Chullin 94b (Gemara and Rashi)

היכי מכרוזינן? אמר רב יצחק בר יוסף: נפל בישראל לבני חילא. ולימא: נפל טריפתא לבני חילא! לא זבני, והא קמטעי להו! אינהו הוא דקמטעו נפשייהו. כי הא, דמר זוטרא בריה דרב נחמן הוה קאזיל מסיכרא לבי מחוזא, ורבא ורב ספרא הוו קא אתו לסיכרא, פגעו אהדדי, הוא סבר: לאפיה הוא דקאתו, אמר להו: למה להו לרבנן דטרוח ואתו כולי האי? א"ל רב ספרא: אנן לא הוה ידעינן דקאתי מר, אי הוה ידעינן טפי הוה טרחינן; א"ל רבא: מי"ט אמרת ליה הכי, דאחלישתיה לדעתיה? א"ל: והא קא מטעינן ליה! איהו הוא דקא מטעי נפשיה.

רש"י

אינהו הוא דקא מטעו אנפשייהו. ללא משיילי אי טרפה אי כשרה והאי דקתני לעיל מפני שמטעו במוכר לו בחזקת שחוטא וכן הפותח חציות המכורות לחנוני דאומר לו בשבילך אני פותחם דולאי גונב דעתו. איהו הוא דמטעי אנפשיה - אחרי שאנו לו לקראתך ילאנו.

[In many communities that had only kosher slaughterers there was a prevalent custom to make an announcement if a slaughtered animal turned out to be a Treifah. This was done so that people would not unwittingly buy meat from a non-Jew who may be re-selling the Treifah. The Gemara now discusses the wording of the announcement:]

What is the [text of the] announcement that we make [to notify the public

about the occurrence of a Treifah]? Rav Yitzchak bar Yosef said: [We announce:] “Meat for the general populace has fallen [into our hands].”

[The Gemara asks:] But let us say [explicitly], “Treifah [meat] for the general populace has fallen [into our hands]”?

[The Gemara answers: Then the idolaters] will not buy [the meat].

[The Gemara counters:] But [the meat sellers] are misleading them, [for they are under the impression that they are purchasing kosher meat!]

[The Gemara answers:] It is they who are misleading themselves!

[The Gemara cites support for this distinction:]

Like that [incident involving] Mar Zutra the son of Rav Nachman [who] was going from Sichra to Bei Mechoza, and Rava and Rav Safra were coming to Sichra. They met each other [on the road]. [Mar Zutra] thought that they were coming out to greet him [to accord him honor]. He said to them, “Why was it necessary for the Rabbis [i.e. you] to trouble themselves and come so far?”

Rav Safra said to him, “We did not know that the master was coming, [but] had we known, we would have troubled ourselves even more.”

Rava said to [Rav Safra], “What is the reason that you said this to him [and] disheartened him [so]?”

[Rav Safra] said to [Rava], “But [had I not said so], we would be misleading him [into thinking that we came out to honor him]!” [Rava replied] “It is he who misled himself” [and we are under no obligation to correct his mistake. Similarly, the idolater has only himself to blame for assuming that the meat is Kosher, without inquiring whether it is indeed so.]

Rashi:

It is they who are misleading themselves – For they did not ask whether it is Kosher or not. As for what we learned earlier, [namely; that it is “forbidden to sell a Treifah to a non Jew] because you are misleading him” – that is referring to where you sold it with the common presumption that it was Kosher. The same holds true for the case of one who opens barrels [of wine] that are already sold to a shopkeeper, [thereby deceiving the guest into believing that the barrel was opened for him and that you are risking the spoilage of your wine to honor him – here too it is prohibited only because] he tells the guest “I am opening it for your sake.” This is certainly a case of Geneivas Da’as.

It is he who misled himself— since we [Rava and Rav Safra] did not say to him “we came out to greet you.”

According to Rashi, one violates the prohibition against Geneivas Da'as only if one explicitly says something to the deceived party that causes him to be misled. If, however, nothing was said (and one action could be interpreted differently) then one has not violated the prohibition, and the other party is merely misleading himself.

For example, if a guest thinks that a host has gone to great expense in order to honor him, but the host did not explicitly say “I did this all for your honor,” then the guest is misleading himself. Since the host did not say anything, he has not violated the prohibition against Geneivas Da'as, even though the guest thinks it was done for his sake, and might feel indebted to the host.

B2. The person is misleading himself if he could have reasonably concluded that the gesture was not done for his sake.

תוספות שם ד"ה אינהו
Tosafos, ibid.

אינהו דקא מטעו אנפשייהו כי הא... לכך נראה דהתם בסתם ואסור משום דאין לאורח לאסוקי אדעתיה דמכורות לחנוני אבל הכא איבעי [להו] לאסוקי אדעתיהו דטרפה היא ומר זוטרא איבעי ליה לאסוקי אדעתיה שלא לקראתו היו באים אלא לצורך עצמם.

It seems that with regard to that case [of R' Yehudah who opened a barrel of wine for Ulla, see Source A1] – there he opened it without saying anything [like “I am opening this for you”], and even then it was prohibited [due to Geneivas Da'as]. The reason [that it is a case of Geneivas Da'as] is because a guest is not expected to assume that [the barrel being opened has actually] been sold to a shop keeper [and *that* is the real reason it is being opened].

However, here [in the case of the Jewish butcher selling a Treifah (an injured animal whose meat is not Kosher) to the non-Jews, Source B1],

the non-Jewish buyers can be expected to realize that the animal may be a Treifah [since it was only announced that “meat” is being sold].

And [with regard to] Mar Zutra [Source B1], he too should have realized that [it was possible that] his colleagues were not coming to greet him, but were rather traveling [on that road] for their own purposes.

Unlike Rashi, who rules that there is Geneivas Da'as only when something misleading is explicitly stated (or there is no other way to interpret the gesture), Tosafos rules that even when nothing is said, (and therefore the gesture could be interpreted differently), there is still Geneivas Da'as if the context of the gesture overwhelmingly indicates that it was done for the sake of the deceived party. According to Tosafos, one does not violate the prohibition of Geneivas Da'as if the other party could have figured out from the context of the gesture that it may not have been done for his sake.

For example, in the case of the Gemara it is announced publicly that “meat” is being sold to a non-Jewish shopkeeper (Source B1), and they do not announce that a Treifah (injured animal unfit to eat) is being sold. In such a case there is no Geneivas Da'as since the non-Jew buyer is expected to understand from the situation that the Jew could be selling Kosher meat *or* non-Kosher meat. The non-Jew assumed on his own it was Kosher meat, and is thus said to be misleading himself. Similarly, in the case where Mar Zutra meets his colleagues on the road, there is no Geneivas Da'as since he could have reasonably concluded that they did not specifically come to greet him on the road (*ibid.*).

However, there is Geneivas Da'as in a situation where the context overwhelmingly supports the assumption that the gesture was done for the other person's sake. For example, when the host opens a barrel of wine in the presence of the guest (Source A1, Case 3), the guest cannot be said to be “misleading himself,” since the host's actions cannot be reasonably interpreted in any other manner.

B3. An application of the rulings of Rashi (Source B1)
and Tosafos (Source B2).

גיטין דף ס"ב ע"א, ורש"י ותוס'
Gittin 62a (Gemara, Rashi and Tosafos)

ואין כופלין שלום לעובד כוכבים: רב חסדא מקדים ויהיב להו שלמא. רב כהנא א"ל שלמא למר.

רש"י

שלמא למר. ולא היה מתכוין לברכו אלא לכו היה לרבו.

תוס'

שלמא למר. פי' בקונטרס ולא היה מתכוין לברכו אלא לכו היה לרבו וצ"ע שלא יהא בזה גונב דעת הבריות ועל חנם פי' כן דלא קאמר אלא דאין כופלין לו שלום.

[The Gemara analyzes a ruling of Rav Dimi:]

[Rav Dimi says:] One may not [give a] double [greeting of] “Shalom” to an idolater. [Although one may say it once for the sake of peace, to say Shalom twice is too much, since it one of the names of G-d.]

[The Gemara comments:] Rav Chisda would precede [any idolaters that he met] and greet them with “Shalom” [before they greeted him. Since he greeted first, he would thereby avoid the customary response of a double Shalom, and thus avoid violating Rav Dimi’s ruling]. Rav Kahana would say to him “Shalom to [the] master.”

Rashi:

Shalom to [the] master – [Rav Kahana] did not mean to greet the idolater, but rather would have his own Rabbi in mind [when he said the words “Shalom to the master,” even though he was talking to the idolater].

Tosafos:

Shalom to [the] master – Rashi explains that [Rav Kahana] did not mean to greet the idolater, but rather would have his own Rabbi in mind. [But this explanation is difficult to understand and] needs further thought, for it would seem to be an act of Geneivas Da’as. And [in any case] there is no reason to explain Rav Kahana as such, for Rav Dimi [who said in the Gemara that one may not give a double greeting of Shalom to an idolater,] only said that one may not [give a] *double* [greeting of] “Shalom” to an idolater [and by saying “Shalom to the master” one has avoided the double greeting of Shalom].

According to Rashi, Geneivas Da'as only occurs when an explicitly misleading statement is made (and there is no other way to interpret the words).

Thus, it would be permitted to appear to greet an idolater by saying to him “Shalom to the master” and having one’s Rabbi in mind, since technically this is not an explicitly misleading statement. In this way Rav Kahana was able to maintain peaceful relations with the non-Jews, while avoiding greeting them with Shalom which is one of the names of G-d.

According to Tosafos, even when nothing is said, there is still Geneivas Da'as if the context of the gesture overwhelmingly indicates that it was done for the sake of the deceived party.

Thus, according to Tosafos, *insincerely* greeting an idolater with “Shalom to the master” is misleading enough to be Geneivas Da'as (for the idolater surely has every right to assume the blessing is being conferred upon him). But to greet him *sincerely* with “Shalom to the master” is not Geneivas Da'as and is permissible according to Rav Dimi, since it is not a double Shalom greeting.

B4. Possible supporting evidence for Tosafos (Source B2).

משנה מסכת שביעית פרק י' משנה ח'
Mishnah Shvi'is 10:8

כיוצא בו רוצח שגלה לעיר מקלט ורצו אנשי העיר לכבדו יאמר להם רוצח אני אמרו לו אעפ"כ יקבל מהם שנאמר וזה דבר הרוצח:

Similarly, in the case of an unintentional murderer who was exiled to a city of refuge, where the townspeople would like to accord him with some honor – he must tell them, “I am a murderer.” If they reply, “Nevertheless [we still want to honor you],” he may accept [the honor] from them.

[The obligation to tell them of his past misdoing is derived] from the verse, “And this is the matter [d'var] of the [unintentional] murderer” [Devarim 19:4. The simple translation of the Hebrew word “d'var” is “matter,” but it can also be translated as “word.” It is this latter translation that the Mishna refers to].

It would seem that this Mishna is supporting evidence for the opinion of Tosafos. For even in the case of the Mishnah where nothing explicitly deceptive was said to the deceived party, one needs to inform him of his past mistake to avoid transgressing the prohibition against Geneivas Da'as. (This is unlike Rashi, who is of the opinion that *only* if you said something deceptive would you need to correct the other person.)

However, (in defense of Rashi) one could argue that there is no proof from this particular law of the unintentional murderer since it may very well be an exception to the rule. Even though, according to Rashi, Geneivas Da'as only occurs when an explicitly misleading statement is made, the Torah is more stringent in the case of an unintentional murderer. The verse, “And this is the matter [d’var] of the [unintentional] murderer” (Devarim 19:4) can be read as “And this is the *word* of the [unintentional] murderer,” hinting to a specific obligation for an unintentional murderer to inform people – with “words” – of his past misdoing, even where there is no Geneivas Da'as.

B5. More supporting evidence for Tosafos (Source B2).

תלמוד ירושלמי מסכת שביעית פרק י' הלכה ג'
Talmud Yerushalmi, Shvi'is 10:3

א"ר יוסי הדא אמרה בר נש דתני חדא מיכלא והוא אזל לאתר ואינון מוקרין ליה בגין תרתיי צריך מימר לון אנא חדא מיכלא אנא חכים:

Rabbi Yossi related that from this [Mishna that requires an unintentional murderer to inform those who want to honor him of his past misdoing], we learn that if a person knows one tractate of Talmud, and goes to [another] place where they [i.e. the local townspeople] honor him as knowing two, he must [correct their error] and tell them, “I only know one tractate.”

The Talmud Yerushalmi states that one needs to correct another person who mistakenly honors you, *even* if nothing explicitly deceptive was said to him. This law is applicable to all people (even to unintentional

murderers) unlike the question we raised in the previous source. This is supporting evidence for the ruling of Tosafos.

B6. Even where a person misleads himself, if one remains silent in the face of his unjustified gratitude, one is actively deceiving him.

שו"ת מהרי"ט חלק ב' או"ח סימן ח'
She'elos u'Teshuvos MaHarit, Vol. 2, Orach Chaim 8

אלא משום גנבת דעת הוא אלא דקשיא לי בה דהא בפ' ג"ה מוכח דכל היכא דאינהו מטעו נפשייהו לא שייך גנבת דעת לא מבעיא לרש"י ז"ל שפירש דליכא גנבת דעת אלא במוכר טריפה בחזקת שחוטה אלא אפי' למ"ד שחלקו עליו ואמרו אף בסתם שייך גנבת דעת היכא דלא הוה ליה להכירו לאסוקי אדעתיה הו"ל לאסוקי אדעתיהו דלא גמיר אלא חדא מכיל' שהרי הוא לא אמר להם שהיה יודע שתים. וי"ל שמקלסים אותו בפניו ושותק דמשתיקתו טועים בכך.

[The reason that the unintentional murderer needs to inform those who seek to honor him that he is a murderer (Source B4), and the reason that the one who knows one tractate needs to correct those who assume he knows two (Source B5), is] because [to not do so] would be Geneivas Da'as.

However, I then have a question. It is clearly proved from [the Gemara] in Chapter 'Gid Hanasheh' [Chullin 94b, Source A1], that in any case where the [mistaken] individuals are misleading themselves, there is *no* violation of Geneivas Da'as. [Here too, the townspeople are misleading themselves and there should be no Geneivas Da'as.]

This [question] is certainly [problematic] according to Rashi who explains that one only violates Geneivas Da'as if he [deceptively] sells a Treifah [injured animal unfit to eat] under the guise of being Kosher [either he sells it from a Kosher meat store, or he says explicitly that it's Kosher]. However, it is even a question for those who argue against [Rashi, i.e. Tosafos], who say that even if the fellow does nothing [to create the mistaken impression], it is still Geneivas Da'as in a case where it was impossible for the victim to figure out [that the gesture was not done

for him specifically. So too] here the townspeople should have assumed that the newcomer only knew one tractate, because he never said that he knew two!

An answer is that [even though the victims are deceiving themselves, this is *still* a case of Geneivas Da'as since] they are praising him in his presence [for his extra knowledge] and he remains silent. Since his silence [is like consent], they [being led to] make a mistake [about his level of knowledge].

As was seen above, if a person misleads himself into thinking that he is indebted to another, then both Rashi and Tosafos agree that one is not transgressing the prohibition against Geneivas Da'as. (According to Rashi, he is misleading himself if nothing deceptive was said to him. According to Tosafos he is misleading himself if nothing deceptive was said to him *and* he could have reasonably concluded from the context that the gesture was not done for his sake.)

According to the Maharit, however, *even* in a case where the person is misleading himself, if he is giving you honor *in your presence* or thanking you for the gesture that you never did for him, one is obligated to correct him according to both Rashi and Tosafos. (Based on this fact, Sources B4 and B5 can no longer be seen as supporting evidence for Tosafos against Rashi.)

Remaining silent in the face of the other person's gratitude is tantamount to consent. By remaining silent one would be actively misleading the person and transgressing the prohibition against Geneivas Da'as.

(It should be noted that if one remained silent for another reason, for example, in order not to embarrass the person by correcting him, then silence is not considered consent and one has not transgressed the prohibition against Geneivas Da'as. This explains why [in Source B1] Rava wanted to remain silent when Mar Zutra expressed gratitude for coming to meet him – since his silence was to prevent embarrassing him, and not in order to mislead him.)

B7. The practical Halacha follows Tosafos

שולחן ערוך חושן משפט סימן רכ"ח סעיפים ו', ז'
 Shulchan Aruch, Choshen Mishpat 228:6-7

סעיף ו. ... ואין לגנוב דעת הבריות בדברים, שמראה שעושה בשבילו, ואינו עושה, אסור. כיצד, לא יסרהב (בחבירו) שישעוד עמו, והוא יודע שאינו סועד, ולא ירבה לו בתקרובת והוא יודע שאינו מקבל, ולא יפתח חביות הפתוחות לחנוני, וזה סובר שפתחם בשבילו, אלא צריך להודיעו שלא פתחם בשבילו. ואם הוא דבר דאי בעי ליה לאסוקי אדעתיה שאינו עושה בשבילו, ומטעה עצמו שסובר שעושה בשבילו לכבודו, כגון שפגע בחבירו בדרך וסבור זה שיצא לקראתו לכבודו, אין צריך להודיעו. ז. לא יאמר לו: סוך שמן מפך זה, והוא ריקן. ולא ילך לבית האבל ובידו כלי ריקן, וסובר האבל שהוא מלא (יין) ואם הוא עושה כדי לכבודו, מותר.

6) ... One may not “steal the mind” of people with one’s words. It is therefore prohibited to appear to do something for another, when in fact he is not doing anything for him.

What are examples of this? A person should not urge [his fellow] to eat with him when he knows that he will not [accept the invitation to] eat [with him]. Nor should one repeatedly offer gifts when one knows that he will not accept. Nor should one open a barrel [of wine] if the guest believes that it was opened for his sake, when [in truth] it had to be opened [in order to sell the wine] to a storekeeper. Rather, [the host] must tell the guest that he did not open the barrel for his sake.

[However, there is *no* Geneivas Da’as if from the context of the situation] the “victim” could be reasonably expected to figure out that the gesture is *not* being done for him. [In such a case] he is deceiving himself, since he assumes that it was done for his honor.

For example, if one bumped into one’s friend on the way, and he thinks you came out to greet him and to honor him, you are not required to inform him [since he could figure out that perhaps you didn’t come this way to greet him].

7) Do not say to another “Anoint [yourself with] oil from this flask,” when it is actually empty. Nor may one go to the house of a mourner with an empty flask [of wine] and the mourner believes that it is full [bringing wine was a gesture of consolation to the mourner].

However [in both cases], if he does this for the other person's honor, [for example when there are others present who will see the mourner being offered this gift and will thereby have greater esteem for him], then it is permitted.

The Shulchan Aruch rules in accordance with Tosafos that even when nothing deceptive is said, there is still Geneivas Da'as if the context of the gesture overwhelmingly indicates that it was done for the sake of the deceived party. In such a case one is obligated to inform the deceived party that the gesture was not done for his sake.

Conversely, if the "victim" *could* be reasonably expected to figure out that the gesture was not done for his sake, then there is *no* Geneivas Da'as. Still, if he is thanking you in your presence for your gesture, then remaining silent is tantamount to consent, and one would be obligated to inform him (Maharit, Source B6).

C. IF YOU WOULD HAVE DONE THE GESTURE IN ANY CASE IT IS NOT GENEIVAS DA'AS

Above (Source A1) we saw the case where R' Yehudah, the host, opened a barrel of wine for his guest, Ullah. The Gemara asked: Isn't this a case of Geneivas Da'as since R' Yehudah had to open the barrel in order to sell it, and therefore he wasn't doing it exclusively to honor his guest?

We answered that

1. either R' Yehudah must have informed Ullah of his secondary motivation for opening the barrel, or
2. even if R' Yehudah didn't inform Ullah, there was no problem of Geneivas Da'as since R' Yehudah would have opened the barrel *anyway* for Ullah even if he didn't have a secondary motivation.

We now elaborate on the second answer: the leniency of "I would have done it in any case."

C1. No problem of Geneivas Da'as if you would have done the gesture in any case.

תוספות מסכת חולין דף צ"ד ע"ב ד"ה והא
Tosafos, Chullin 94b

והא קא מטעיני ליה. וא"ת והא אין זה טעות כיון דבלאו הכי היו באים לכבודו כדקאמר ליה טפי הוה טרחנא דכה"ג אמרינן לעיל שאני עולא דחביב ליה לרב יהודה וי"ל דלא דמי כלל דלעיל נהי דליכא פסידא כל כך במה שפותחן כיון שהיו מכורות לחנוני מ"מ בעבורו פתחן וכיון דאפילו לא היו מכורות היה פותחן בעבורו לא הוצרך להודיעו כלל אבל הכא לא באו כלל בעבורו.

[Background: the Gemara (Source B1) records an incident where Mar Zutra mistakenly thanked his colleagues, Rava and Rav Safra, for coming to greet him on the road. To avoid Geneivas Da'as, Rav Safra corrected him and said "We didn't know you were coming this way, but had we known, we would have gone to more effort." Later, Rava commented that there was no need to dishearten Mar Zutra and correct his misunderstanding. To which Rav Safra responded that if they remained silent they would be effectively misleading Mar Zutra.

Tosafos quotes Rav Safra's response:]

"We would be misleading him [Mar Zutra, if we didn't tell him our real intentions]."

[To which Tosafos asks:]

One may ask: this is not [a case of] misleading, since *anyway* they would have gone out to honor him. Like [Rav Safra] said to him "I would have troubled myself more [had I known you were coming this way]." [Why then did Rav Safra say "We would be misleading him"?)

Similarly, as we said above [Chullin 94a, Source A1, in the case where Rav Yehudah, the host, opened a barrel of wine for his guest, Ullah. The Gemara asked: Isn't this a case of Geneivas Da'as since Rav Yehudah had to open the barrel in order to sell it, and therefore he wasn't doing it exclusively to honor his guest? The Gemara answered:] "Ullah is different, for he is so beloved to Rav Yehudah" [that he would have opened the barrel for him in any case].

[Tosafos answers:]

We may answer that [the case of the chance meeting of Mar Zutra on the

road] is not comparable at all to the case above [the wine served by Rav Yehudah to Ulla]. [For in the case of Rav Yehudah serving wine to Ulla] – although there was no real loss by opening this barrel, since the wine was sold to a shopkeeper [and the leftover wine would not go to waste] – nevertheless [it was different in two aspects:]

[1.] he was in actuality opening the barrel for his guest, and

[2.] even if the barrel did not need be opened because it had been sold, he would have opened it for him in any case,

therefore he did not need to inform Ullah at all.

However, here [in the case of Rava and Rav Safra's chance meeting of Mar Zutra], they had [in actuality] not come out for him at all.

Tosafos points out that if an apparent gesture of honor or kindness has two motivations behind it, then you are not required to inform the other person of the other motivation if:

1. You would have done the act of honor for the person *in any case*, even if the secondary reason didn't exist (for example: you would have opened a barrel of wine for the guest's honor even if you did not need to open it for some other reason), and
2. At the *time* of doing the act you had the primary intention of honoring the other person, even though the secondary reason existed as well (i.e. the barrel needed opening in order to sell it later, but you opened it with the primary intention of honoring your guest).

One needs both conditions to avoid violating the prohibition of Geneivas Da'as.

Therefore in the case where Mar Zutra met his colleagues on the road and he assumed they were coming for his honor (Source B1), they would have to inform him of their real intention (if not for the fact that he deceived himself as the Gemara concludes), since they never set out on the road with the intention to meet him (i.e. they were lacking condition 2 above).

C2. If a secondary motivation exists for the gesture, one is obligated to inform the other person even if you would have done it in any case.

לחם משנה הלכות דעות פרק ב' הלכה ו'
Lechem Mishnah, Hilchos De'os 2:6

הלכה ו'

בגמרא (דף צד) הקשו דעולה עיקלע לבי רב יהודה פתח ליה חביות המכורות לחנוני ותרצו אודועי הוה מודעי ואי בעית אימא שאני עולה דחביב ליה לרב יהודה דבלאו הכי הוה פתח ליה. משמע לפי תירוץא בתרא דאם הוא אדם דבלאו הכי היה פותח בעבורו מותר וא"כ קשה דבכולי גמ' נקטינן לישנא בתרא עיקר וא"כ למה לא כתב רבינו דין זה וכן הטור בח"מ בהל' אונאה סי' רכ"ח לא הזכירו וכתב שם הרב"י ולא ידעתי למה השמיטו רבינו. ואפשר משום דמלתא דפשיטא היא, עכ"ל. ול"נ דאין זה מספיק דהא התוס' הקשו על הא דאמרינן התם בהא דמר זוטרא וכו' דהקשו שם והא קמטעי ליה כתבו התוס' שם וא"ת אין זה טעות כיון דבלאו הכי היו באים לכבודו דכה"ג אמרינן לעיל שאני עולא דחביב ותירצו דבפתיחת חביות נהי דליכא פסידא כל כך במה שפותחן כיון שהיו מכורות לחנוני מ"מ בעבורו פתחן, כלומר דלא אמרינן שאם בלאו הכי היה עושה מפני כבודו שמותר אלא בדבר שעושה בשבילו דכיון דסוף סוף בשבילו עשה אע"פ שאין לו פסידא במה שעשה כיון דאפילו אם היה לו פסידא היה עושה בשבילו מותר אבל בדבר שלא עשה בשבילו כלל אע"פ שבשבילו היה עושה אינו מותר וא"כ כיון דאנו צריכים לחילוק זה אין פשוט כל כך שלא היה לו לטור לבארו. לכך נ"ל טעם שוה לרבינו ולטור דלא פסקו כתירוץא בתרא משום דאקושיא שהקשו התוס' לא משמע להו האי תירוץא שתירצו התוס' אלא דרב ספרא ורבא לא ס"ל כתירוץא בתרא אלא כתירוץא דאודועי אודעיה ולכך פסקו כהך תירוץא ולא כתירוץא דואבע"א וכן הרא"ש בפסקיו לא הזכיר ההוא תירוץא מהך טעמא.

In the Gemara [Chullin 94a, Source A1], it was asked [why the following was not a case of Geneivas Da'as]: Ullah went to visit the house of Rav Yehudah, and Rav Yehudah opened barrels of wine for him that were already sold to the storekeeper [which therefore needed to be opened in any case. Since Ullah was deceived into thinking it was opened for his sake, why is this not a case of Geneivas Da'as?] The Gemara answered:

[1.] Rav Yehudah told Ullah, his guest, [that he needed to open the barrels in any case].

Or one could give a second answer:

[2.] Ullah was especially beloved to Rav Yehudah, and therefore Rav Yehudah would have opened [the barrels] for his friend in any case [even if it didn't need to be opened to sell to the storekeeper], and therefore it would be permissible.

It is apparent from the second answer that if he would have opened [the barrel] for his friend even had it not [been sold], then it is permitted [to not inform him of the impending sale]. Which leaves us with a question: in all of Gemara we have a rule that the last answer given [to a question] is the accepted answer. If so, why did our teacher [the Rambam] not write this law [that if you would have done the gesture anyway then it is not Geneivas Da'as, as in answer 2 above]? Similarly, the Tur, Choshen Mishpat, Laws of Fair Pricing, Chap. 228 [where he talks about Geneivas Da'as] does not mention it either. The Beis Yosef [commenting on the Tur] writes there: "I do not know why our teacher [the Tur] left it out. Perhaps it is because it is self evident."

But I [disagree with the Beis Yosef's answer and] think that is not a good enough [reason to explain the omission].

[The Lechem Mishnah now shows why this Halacha is *not* self evident, and cannot account for the Rambam's omission. He does this by citing the Tosafos from Source C1:]

For Tosafos there wrote regarding the story with Mar Zutra [Source A1] commenting on the phrase "We would be misleading him [Mar Zutra, if we did not tell him our real intentions]":

One may ask: this is *not* [a case of] misleading, since *anyway* they would have gone out to honor him. [Why then did Rav Safra say "We would be misleading him"?]

Similarly, as we said above [Chullin 94a, Source A1, in the case where R' Yehudah, the host, opened a barrel of wine for his guest, Ullah. The Gemara asked: Isn't this a case of Geneivas Da'as since Rav Yehudah had to open the barrel in order to sell it, and therefore he wasn't doing it exclusively to honor his guest? The Gemara answered:] "Ullah is different, for he is so beloved [to Rav Yehudah] that he would have opened the barrel for him in any case].

[Tosafos] answers:

[For in the case of Rav Yehudah] opening the barrels [for Ulla] – although there was no real loss by opening this barrel, since the wine was sold to a shopkeeper [and the leftover wine would not go to waste] – nevertheless

[it was different to the case of bumping into Mar Zutra on the road since] he was in actuality opening the barrel for his guest.

[Tosafos] is saying: that we only say [this rule] – that if he would have done it in any case for the other's honor, it is permitted [to not say anything] – in a case where he is indeed doing the act for him. Since at the end of the day he is indeed acting on his behalf, even though he is not suffering a loss due to what he did – but by virtue of the fact that he would have done it for him even with the loss – it is permitted [to not inform him that there is no loss]. But in a case where he is not doing the act for him at all, even though he would have theoretically done this for him, it is not permitted [to not say anything, but rather you must inform him of your real intentions]. Now since we need to be informed of this distinction, it is not so 'self evident' [as the Beis Yosef claims] and the Tur should have written about it!

Therefore, I believe that the reason that the Tur and Rambam [do not write about this, is that they] do not rule like this last answer of the Gemara [in the case of Ulla – namely that Rav Yehudah would have done it in any case, but rather like the first answer, that Rav Yehudah informed Ullah]. For they were also bothered by Tosafos' question [on Rav Safra], but they did not agree with Tosafos' answer. Rather they assume that Rav Safra and Rava did not agree with this last answer [of 'I would have done it in any case'], but rather like the first answer that one needs to inform [the deceived party].

Therefore [the Rambam and Tur] rule like this first answer and not like the second answer. The Rosh, in his rulings, also does not mention the latter answer of the Gemara for the same reason.

The Rambam and Tur do not mention the leniency of “If you were doing the act for his honor in any case, even though a secondary motivation exists, you do not need to inform him” (Tosafos, Source C1). The Beis Yosef explains that they omitted it because they felt it is an obvious leniency and does not to be written. This explains why the Shulchan Aruch also omitted it.

The Lechem Mishnah, however, contends that the Rambam and Tur omitted it because they rule that there is no such leniency. In other words, if a secondary motivation exists for the act, one is obligated to inform the other person who thinks that the gesture was done exclusively for his

sake. It does not help to claim “I would done the gesture for him anyway.” Their source is that Rava and Rav Safra (in Source B1) are of the opinion that one must inform the other person to avoid Geneivas Da’as, and it is not enough to say “I would have done it for him anyway.”

C3. If you would have done the gesture in any case it is not Geneivas Da’as.

שו"ע הרב הלכות אונאה וגניבת דעת סי"ג

Shulchan Aruch HaRav, Hilchos Ona'ah v'Geneivas Da'as 13

יג. כיצד לא יפתח חבית יין העומדת להפתח מיד מפני שכבר מכרה לחנוני וזה סבור שפתחה בשבילו להשקותו יין חזק ונפסד על ידו הפסד גדול שהרי חבית זו שפתחה תשאר חסירה ויתקלקל יינה ויבא להחזיק לו טובה בחנם (אא"כ הוא חביב עליו שהיה פותח בשבילו) אלא צריך להודיעו שלא פתחה בשבילו כי מן הסתם אין לו להעלות על דעתו שכבר מכרה לחנוני אבל בדבר שיש לו להעלות בדעתו שאינו עושה בשבילו ומטעה עצמו וסבור שעושה בשבילו כגון שפגע בחבירו בדרך וסבור זה שייצא לקראתו לכבודו א"צ להודיעו וכן כל כיוצא בזה:

13. What is an example [of Geneivas Da'as]?

One may not open a barrel of wine that is meant to be opened shortly since it has been sold to a shopkeeper, when the [person being served a drink] thinks that you opened it for his sake, to serve him strong [fresh] wine and that you are suffering a serious loss for his sake – in that this barrel that was opened will remain deficient and the wine will ruin [quicker due to that exposure]. [Since he thinks it was opened for his sake] he will unnecessarily be indebted to you (unless he so dear to you that you would have opened it for him anyway).

Rather, you must inform him that you did not open it for him – for in general people are not expected to think that you have already sold it to a shopkeeper [and therefore you needed to open the barrel anyway]. However, with regard to something where the person could be reasonably expected to figure out that you are not doing [the gesture] for him, and he is misleads himself into thinking that you are doing it for him [exclusively] – for example, where you meet him on the road and he thinks that you

came out to greet him to honor him – in this and similar cases one does not need to inform him.

In deciding the practical Halacha, Rabbi Shneur Zalman of Liadi (author of the Shulchan Aruch HaRav) sides with the Beis Yosef (in Source C2) – that if you would have done an act of honor or kindness for someone in any case, you do not need to inform them, even if you have a secondary motivation behind doing it.

D. COURTEOUS BEHAVIOR IS NOT GENEIVAS DA'AS

D1. It is permitted to offer a guest food even if you know he won't eat.

סמ"ע חו"מ סי' רכ"ח ס"ק ח' וי'
S'mah, Choshen Mishpat 228:8, 10

ה. לא יסרהב. פי' לא יפציר בו ומדכתב לשון זה וגם אחר זה כת' ולא ירבה לו בתקרובת דקדקתי בפרישה דדוקא בכה"ג להפציר בו ולהרבות שלא כנהוג הוא דאסור אבל לדבר לו פעם אחת ושתיים בא אכול עמי מותר כי אדרב' אם לא ידבר עמו כן יתבזה חבירו דהרואים שנכנס ויוצא ואין מכבדו לומר לו בא ואכול עמי יאמרו שהוא מפני שפלותו כי אין הכל יודעין שנמנע לומר כן מפני שיודע שאינו סועד וק"ל:

י. והוא ריקן. פירושו והוא יודע בו שלא יסוך ומ"ה דוקא אסור מפני גניבת דעת דחבירו יהזיק לו טובה חנם אבל אם ה' בו שמן אף שיודע בו שלא יסוך מותר לו לדבר בא וסוך ממנו מפני הכבוד וכמ"ש לפני זה:

[The S'mah cites the words of the Shulchan Aruch, Source B7, and then comments:]

8) *One may not urge [his fellow to eat with him]* – That is, he may not press him [to do so]. From this word choice [of “urging”], and also from the words written [by the Shulchan Aruch] just after this, “nor should one repeatedly offer gifts [when one knows that he will not accept],” I deduced

in [my work entitled] “P’risha” – that only when one pressures and asks repeatedly beyond the norm, is it prohibited.

However, to tell him one or two times, “Come eat with me” is permitted. For [this is not improper, but rather] just the opposite! If he were *not* to offer, his friend would be degraded – those present will see that he has come and gone without being honored with an invitation of “Come and eat with me,” and they will assume that it is because he is lowly [and dislinked]. For not everyone will know that the [reason the] host did not invite him, was because the host knows he will not [accept an invitation to] eat. This is easy to understand.

10) [Do not say to another “Anoint yourself with oil from this flask,”] when it is *actually empty* – That is, he knows that he will not [accept the invitation to] anoint, and it is specifically here that it is therefore forbidden due to Geneivas Da’as – for his friend will feel needlessly indebted to him. However, if there was oil in the flask [it is *not empty*], except that you know that he will not [accept the invitation to] anoint, it is permitted to tell him, “Come and anoint from [this flask]” so as to honor him, as I wrote above.

The S’mah deduces from the wording “do not *urge*,” (Shulchan Aruch, Source 13, taken from the Gemara, Source A1, Case 1) that it is indeed permitted to *offer* food once or twice to a guest even if you know he will not eat it. Additionally, if one does not offer food he might be degraded in the eyes of onlookers. They will think that the host does not want to eat with the guest, and not realize that he just is not hungry. The only prohibition is to urge someone *persistently* to eat when one knows that he does not want to eat.

E. SUMMARY

A. The Source of the prohibition of Geneivas Da'as

Based on the examples given in the Gemara (Chullin, Source A1), we can define Geneivas Da'as (literally “stealing of the mind”) as:

Misleading somebody with

1. an *insincere* favor, gift or gesture of kindness or honor, or
2. a *sincere* gesture, but one that *appears* to entail more effort or expense than it actually is,

which will result in the recipient feeling that they owe you something, or having a debt of gratitude to you.

Since Rashi (Source A1) rules that the prohibition of Geneivas Da'as is waived for the sake of maintaining human dignity or honor (Kavod HaBri'os), we deduce that it is a Rabbinic prohibition (since Torah prohibitions are not waived for Kavod HaBri'os). (Sefer HaMitzvos HaKatan also rules that it is a Rabbinic prohibition [Source A5]).

According to others, Geneivas Da'as is a Torah prohibition, since it is an aspect of the Torah prohibition against stealing someone's property (Ritvah, Source A2; Sefer HaMitzvos HaGadol, Source A3). The common aspect of secretly stealing someone's property and stealing their regard for you (Geneivas Da'as), is that in both cases one is acting in an underhanded and malicious manner which corrupts one's character and integrity (Minchas Chinuch, Source A4).

For the purposes of practical Halacha: Geneivas Da'as that causes a monetary loss is a Torah prohibition. If it does not cause a monetary loss, it is a Rabbinic prohibition (Shulchan Aruch HaRav, Source A6). Even in such a case it would be permitted if the purpose is to show honor to the recipient (Shulchan Aruch, Source B7).

According to all, Geneivas Da'as is a prohibition against deceiving Jews and non-Jews alike (Rashi, Source A1; Ritvah, Source A2; Sefer HaMitzvos HaGadol, Source A3; Sefer HaMitzvos HaKatan, Source A5; Shulchan Aruch HaRav, Source A6).

B. A person misleading himself is not Geneivas Da'as

According to Rashi (Sources B1 and B3), one violates the prohibition against Geneivas Da'as only if one explicitly says something to the

deceived party that causes him to be misled or if there's no other way to interpret one's gesture. If, however, nothing was said (and it's possible to interpret the actions differently) then one has not violated the prohibition, and the other party is merely misleading himself.

According to Tosafos (Sources B2 and B3), one violates the prohibition against Geneivas Da'as if the context of the gesture overwhelmingly indicates that it was done for the sake of the deceived party, even though it is possible to interpret the gesture differently. (Rashi and Tosafos are separated by a matter of degree: according to Rashi one transgresses Geneivas Da'as only if there's *no* other way to interpret the gesture. According to Tosafos even if there *is* another way to interpret the gesture, one still transgresses since this other interpretation is implausible.)

The practical Halacha follows Tosafos (Shulchan Aruch, Source B7).

For example, in a case where one opens a barrel of wine for a guest who thinks you are doing it to honor him, and the barrel had to be opened anyway for another reason, one is obligated to inform him, since the guest could not be reasonably expected to figure out that the barrel was not opened for his sake (Chullin, Source A1).

However, even in a case where the person is misleading himself – since he could have figured out from the context that he is mistaken – if he is thanking you in your presence for the gesture that you never did for him, one is obligated to correct him (Maharit, Source B6).

C. If you would have done the gesture in any case it is not Geneivas Da'as

According to Tosafos (Source C1), if an apparent gesture of honor or kindness has two motivations behind it, there is no problem of Geneivas Da'as if:

1. You would have done the act of honor for the person *anyway*, even if the secondary reason didn't exist, and
2. At the *time* of doing the act you had the primary intention of honoring the other person, even though the secondary reason exists as well.

If either condition is missing, one needs to inform the other person of your secondary motivation.

Others contend that in any case where there is a secondary motivation for the gesture, it is Geneivas Da'as and one is always obligated to inform the other person who thinks that the gesture was done exclusively for his sake (Lechem Mishnah, Source C2).

The practical Halacha follows Tosafos (Shulchan Aruch HaRav, Source C3): if you would have done the gesture for the person anyway, there is no Geneivas Da'as.

D. Courteous behavior is not Geneivas Da'as

If you know that someone doesn't want to eat, offering him food once or twice as a courtesy is not considered Geneivas Da'as. In fact, it may be necessary to offer iUm food so that others will not think negatively of him. Similarly, offering him oils or lotions that you know he will not use is permitted (S'mah, Source D1).

F. PRACTICAL QUESTIONS AND SUGGESTED ANSWERS

Note to the reader: The aim of this work is to give the reader an introduction to the Torah guidelines to interpersonal relationships. As always, to gain a practical ruling (P'sak) for a given case, an Orthodox Rabbi or Posek should be consulted.

QUESTION 1: Every morning, Reuven puts out the milk on the Yeshivah's coffee counter for the students and staff. One day somebody else put out the milk.

Later that day someone says "Thank you for the milk, Reuven!" Does Reuven have to inform him that he didn't put it out?

He has to inform them, because today he *did not* do it and silence is like consent (Maharit, Source B6).

QUESTION 2: Following the case in Question 1, but what if the person only thanks him at the end of the month for the all the service he provided all month (even though there was a day he didn't put it out)?

He does not have to inform them, because there's no difference between the gratitude (or honor) he receives for 28 days of service and that which he receives for 29 days of service. Therefore, no one is being misled, and there is no Geneivas Da'as.

However, if he missed, say, 10 days of serving the milk, then there may well be a difference in the gratitude (or honor) he receives. He would have to inform them, because even the slightest amount of gratitude received through deception is considered Geneivas Da'as.

QUESTION 3: Shimon, the Rosh Kollel, handed out the weekly Bein Adam L'Chavero kollel test to the students, but saw that he forgot to include the name of the sponsor and the name of the deceased to whom the sponsorship was dedicated ("Sponsored by ... in the memory of ...").

Is it permissible to print a copy with the names correctly included, and send it to the sponsor?

Prohibited, because Shimon *did not* do the action he is suggesting. In other words, the test sheet did not look like this when they were handed out. The sponsor would therefore be needlessly indebted to Shimon for something he never did (Machzik Tovah). Even if he doesn't feel indebted, Shimon has still perpetrated a falsehood.

QUESTION 4: Someone honors you for knowing 10 tractates of Gemara, when in truth you only know 5. What should you do?

If someone is mistakenly thanking or honoring you, then silence is like actively misleading the other person (Maharit, Source B6). You'd be required to inform them (Yerushalmi, Source B5).

QUESTION 5: Is every case of violation of the prohibition against Geneivas Da'as, also a failure to fulfill the positive Mitvah to "Distance yourself from falsehood" (Shemos 23:7, see Chapter 1)?

Yes, every Geneivas Da'as is also a falsehood (Sheker) because the person is misled into feeling indebted to you.

QUESTION 6: Is every case of falsehood (where one fails to fulfill "Distance yourself from falsehood" as defined in Chapter 1) also a case of Geneivas Da'as?

No, a falsehood (Sheker) is only a Geneivas Da'as if the other person feels indebted to honor, thank or repay the "favor."

QUESTION 7: Is it permissible for a host to dilute his whiskey with water while still in the bottle, and pour it for his guests? Or to serve lower quality whiskey to guests from a bottle that has the label of a higher quality whiskey?

Prohibited, since he will think it is real whiskey and be unnecessarily indebted to you for your kindness (similar to the case in Chullin in Source A1, Case 5).

QUESTION 8: Can you open up a new bottle of whiskey for a guest, when in truth you were going to open it nevertheless to finish it before Pesach (one cannot own whiskey over Pesach)?

Permitted, so long as you would have opened it for him in any case even if Pesach wasn't coming (Shulcan Aruch HaRav, Source C3).

According to others, it is only permitted if you fulfill a second condition: at the *time* of opening the bottle you did it in order to honor him. (However, if he only walked in the room after you'd started opening the bottle and you did it in order to finish it before Pesach, you would be obligated to inform him of your real motivation.) (Tosafos, Source C1).

QUESTION 9: A sleepover guest comes to your house.

a) It is permissible to place a bottle of shampoo in his room for his personal use, when you know he would never make use of it?

Permitted, since you are not urging him and as a result making him feel indebted to you, rather you are just being courteous. (S'mah, Source D1).

b) What if you place an *empty* shampoo bottle in his room?

Prohibited, since he will mistakenly be indebted to you for your "kindness" (S'mah, Source D1; Chullin, Source A1, Case 5).

BIBLIOGRAPHY

Achronim

Achronim is the name given to those leading authorities and scholars from the 16th century to the present, including the R' Yosef Caro (see Shulchan Aruch), R' Moshe Isserles (Remah), as well as the Vilna Goan, the Chofetz Chaim and Rav Moshe Feinstein.

Be'er Mayim Chaim

The section in the book Sefer Chofetz Chaim, written by Rabbi Yisrael Meir Kagan, which offers the footnotes and legal arguments behind the Halachos of guarding one's speech.

Beis Yosef

The name of Rabbi Yosef Caro's primary work by which he is known; he lived from 1488 to 1575; he was born in Toledo, Spain and he died in Tzafas, Israel; Rabbi Caro's magnum opus is his Beis Yosef (House of Joseph), an encyclopedic commentary on the Tur, the code of Jewish law; Rabbi Caro's Halachic decisions were codified in his Shulchan Aruch; this work quickly became accepted throughout the Jewish world as Halachically authoritative.

Chasam Sofer

The name of Rabbi Moshe Sofer's primary work by which he is known; he lived from 1762 to 1838 and became Rabbi of Pressburg (present day Bratislava, Slovakia) in 1806; he was a great teacher and had thousands of disciples; his writings are numerous, including the Chasam Sofer (Seal of the Scribe), the Responsa, the Derashos, and the Toras Moshe

Chofetz Chaim

The name of Rabbi Yisrael Meir Kagan's most well known work (Sefer Chofetz Chaim); he was born in 1839 and died in 1933 at the age of 95; he lived in Radin where he started his own Yeshiva; some of his works include Sefer Chofetz Chaim, Ahavas Chesed, and Nidchei Yisrael; he found that he needed to clarify many laws of the first section of the Shulchan Aruch, and therefore wrote his famous work, the Mishnah Berurah, which is an authoritative Halachic source; he was totally involved in all matters of the Jewish people even when he was well into his nineties.

Chumash

Known in English as the Five Books Moses and commonly referred to as the Torah

Shemos

The second book of the Chumash; it deals with the enslavement of the Jews by Pharaoh and the Egyptians, the birth and rise of Moses, and the miraculous deliverance of the Jewish People by G-d through the leadership of Moses.

Eiger, Rabbi Akiva

One of the greatest Torah scholars of his time and he was the foremost leader of European Jewry during the end of the 18th century and the beginning of the 19th century; born in 1761 in Hungary; his commentary on the Gemara appears in all standard editions as well as his Halachic commentary on the Shulchan Aruch

Gemara

Also known as the Talmud; the essence of the Oral Torah which was written down from 50 BCE through 500 CE; the first part codified by Rabbi Yehudah HaNasi was the Mishnah; ensuing discussions were redacted as the Gemara by Rav Ashi and Ravina around 500 CE.

Bava Metziah

Tractate of the Gemara that deals with movable property and wages

Bava Basra

Tractate of the Gemara that deals with the laws of property

Gittin

Tractate of the Gemara that deals with divorce

Kesubos

Tractate of the Gemara that deals with marriage contracts

Makkos

Tractate of the Gemara that deals with the penalty of lashes

Nedarim

Tractate of the Gemara that deals with vows

Pesachim

Tractate of the Gemara that deals with Pesach and its sacrifices

Shevuos

Tractate of the Gemara that deals with oaths

Succah

Tractate of the Gemara that deals with the festival of Succos

Yevamos

Tractate of the Gemara that deals with a widowed sister-in-law

Yoma

Tractate of the Gemara that deals with Yom Kippur

Kaminetsky, Rabbi Yaakov – Sefer Emes L'Yaakov

He was a prominent Rosh Yeshiva and Posek (Halachic authority) who lived from 1891 to 1986; he was born in the Lithuania and then studied for 21 years in the Slabodka yeshiva; he moved to North America in 1937, where he initially took rabbinical positions in Seattle and then Toronto; his sefer Emes L'Yaakov is a commentary on Chumash.

Maharal

Acronym for Rabbi Yehuda Loewe ben Bezalel who lived from 1526 to 1609; his works include a major commentary on Rashi's commentary on the Chumash, volumes on Passover, on Pirkei Avos, on Drashos Chazal, on development of character, and an innovative commentary to the Aggadic aspects of the Gemara (non-Halachic thought of the Rabbis in the Gemara, encoded in stories and parables); he was the Chief Rabbi of Moravia, Posen and Prague.

Maharsha

Acronym for Moreinu HaRav Shmuel Eliezer who lived from 1555 to 1631; one of the most important rabbis and Talmudic scholars in Poland in his time; his commentaries appear in all editions of the Gemara

Mishnah

First written compilation of the Oral Law; Rabbi Akiva was first such compiler; Rabbi Yehudah HaNasi was the final compiler of the Mishnayos, in approximately 200 CE; It is divided into six Sedarim, or Orders: 1. Zeraim, agriculture-related Mitzvos; 2. Moed, Shabbos and the holidays; 3. Nashim, Mitzvos relating to women; 4. Nezikin, laws regarding damages; 5. Kodshim, holy matters, such as Mitzvos related to the Temple and sacrifices; 6. Taharot, matters of purity, such as family purity and impurity emanating from a corpse.

Mishneh Torah

Written by the Rambam; it was the first systematic codification of Jewish law and the only one which encompasses every aspect of the Torah; it consists of 14 volumes and is considered one of the greatest classics of Torah literature; it was first printed in Rome in 1475; the Rambam was criticized by other scholars for leaving out Talmudic references as they feared that this would have the effect of bringing students away from study of the Talmud. (see Rambam)

Orchos Tzadikim

It is a classic book of ethics and character refinement, written by an anonymous author of Ashkenazi origin in the 14th century under the original title of Sefer HaMiddos.

Rabbeinu Yona

Also known as Rabbeinu Yona HaChassid; born in 1180 in Spain; he was a contemporary of the Rambam and the Ramban; he was a giant in Torah and holiness and after being invited to the position of the Rabbi of Toledo, Spain, he became one of the greatest leaders of Sephardi Jewry; author of Sha'arei Teshuvah (see Sha'arei Teshuva)

Rambam

Acronym for Rabbi Moshe ben Maimon; born in 1135 in Spain; known as one of the greatest Jewish philosophers and codifiers of Jewish law; he served as the personal physician to Saladin the Great, Sultan of Egypt and Syria; he wrote The Guide for the Perplexed; his masterwork was the Mishneh Torah - a great codification of all Jewish law (see Mishneh Torah).

Ramban

Acronym for Rabbi Moshe ben Nachman; born in 1194; he was one of the greatest and most influential of the Rishonim; he defended the Rambam when there was a schism amongst Rabbis over the validity of the Rambam's work; also like the Rambam, he was equally distinguished in both Halacha and Jewish philosophy; he wrote over 50 works on Chumash, Gemara, Halacha, Jewish philosophy, Kabbalah, and medicine, all of which are considered major classics.

Rashba

Acronym for Rabbi Shlomo ben Aderes; born in 1235 in Barcelona; wrote thousands of Responsa; he was one of the greatest Rishonim and most

influential leaders of Spanish Jewry; he was a disciple of the Ramban and of Rabbeinu Yona.

Rashi

Acronym for Rabbi Shlomo ben Yitzhak; born in 1040 in France; known to be the greatest commentator on the Written Law as well as on the Oral Law; he is studied universally in both areas by experts and beginners; Rashi accomplished all this during the period of the Crusades, when life was extremely dangerous for the Jews; he had only daughters, who were great in their own right, and were married to the Ba'alei Tosafos, men of exemplary Torah knowledge

Rishonim

Literally “the early authorities,” c. 1000 CE - c. 1500 CE

Remah

Acronym for Rabbi Moshe Isserles; born in 1530 in Poland; he established a yeshiva in Krakow, Poland and wrote Halachic notes to the Shulchan Aruch, which he called the Mapah (Tablecloth); the annotations appear today in the Shulchan Aruch (the Code of Jewish Law); Ashkenazi Jewry follows the ruling that he recorded (see Shulchan Aruch).

Rif

Acronym for Rabbi Yitzchak Alfasi who lived in the 11th century in Fez, Morocco; he wrote the Sefer HaHalachos which comments on Gemaras in Moed, Nashim, Nezikin, Brachos and Chulin; the sefer is regarded as a methodical and concentrated Halachic source because it presented the halacha clearly and conclusively; he brought the Gaonic period to an end

Rosh

The name given to Rabbi Asher ben Yechiel who lived from 1250 to 1327; The Rosh refers to a commentary on the Talmud and is found in nearly every edition of the Babylonian Talmud; in 1306 he became the Chief Dayan (Judge) of Toledo as well as the Chief Rabbi of the community.

S'dei Chemed

Written by Rav Chaim Chizkiya Medini in the mid-1800's; it is a monumental 18-volume Halachic work.

Sefer Chofetz Chaim

Written by Rabbi Yisrael Meir Kagan and published in 1873; it addresses the topic of constructive speech and the prohibition against tale-bearing and slander (see Chofetz Chaim).

Sefer HaChinuch

In English: The Book of (Mitzvah) Education; it was written in 1252; the book explains the 613 Mitzvos with a basic description of the Mitzvos, the possible reasons, the Halachos, and when and to whom it applies; it was written by Rabbi Aharon HaLevi, the Ra'ah, and was based on the enumeration of the Mitzvos of the Rambam.

Sefer HaMitzvos

A compendium of the 613 Mitzvos; written by the Rambam in 1510 (see Rambam)

Sefer HaMitzvos HaGadol

Also known as the S'mag; Halachic work on the 613 Mitzvos; it was written by Rabbi Moshe ben Yaakov who lived from 1198-1274.

Sefer HaMitzvos HaKatan

Halachic work on the 613 Mitzvos by Rabi Yaakov ben Yosef of Corbeil (1206-1280); the work follows the Sefer Mitzvos Gadol but in a different order.

Sefer Yeraim

Written by Rabbi Eliezer of Metz wrote in the 12 century; it is a compilation of laws based on the 613 commandments; the work is important because it connects the French and Spanish schools of Halacha.

Sha'arei Teshuva

Written by Rabbeinu Yona who as one of one of the Rambam's main detractors ultimately changed his mind and felt he was wrong; in response he then composed Sha'arei Teshuva (The Gates of Repentance) in which he outlined the methods of doing Teshuva; it is one of the most important works of Mussar (character refinement) ever written.

She'elos u'Teshuvos MaHarit

Hebrew for *Questions and Answers of the MaHarit*; written by the MaHarit which is an acronym for Moreinu HaRav Yosef Trani who lived from 1568 to 1639; he was the Rosh Yeshiva and Chief Rabbi of Constantinople; the leading

Posek (Halachic authority) for Sephardi Jewry in the 17th century

Shulchan Aruch

The standard code of Jewish law followed in the present day, written by Rabbi Yosef Caro and was first published in 1564; it is divided into four parts: like the Tur - Orach Chaim, Yoreh Deah, Even HaEzer and Choshen Mishpat.

Choshen Mishpat

This section addresses aspects of Jewish law pertinent to finance, torts, legal procedure, loans and interest.

Orach Chaim

This section addresses the order of the day, from the moment of waking until going to sleep and the cycle of the year, including Shabbos and Holy Days.

Tosafos

The commentaries on the Gemara by German and French rabbis of the 12th and 13th centuries; printed in all editions of the Babylonian Talmud.

Tur, The

Code of Jewish law written by Rabbi Yaakov, son of the Rosh, in the 14th century; it is also referred to as the Arba Turim; it is a predecessor to the Shulchan Aruch; the Halachic work is divided into four parts – Tur Orach Chaim, Tur Yoreh Deah, Tur Even HaEzer and Tur Choshen Mishpat.

